

BULKY DOCUMENTS

(exceeds 300 pages)

Proceeding/Serial No: 91123506

Filed: 9-13-06

Title: Applicant / Respondent's First

Notice of Reliance

Part 1 **of** 2

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PUCEL ENTERPRISES, INC.

Opposer/Petitioner,

v.

GRIZZLY INDUSTRIAL, INC.

Applicant/Respondent.

)
) *Consolidated Proceedings*
)
) Opposition No. 91123506
) Cancellation No. 92031984
) Cancellation No. 92032024
) Cancellation No. 92032025
)
)
)
)

09-13-2006

U.S. Patent & TMO/TM Mail Rpt Dt. #

**APPLICANT/RESPONDENT'S FIRST NOTICE OF RELIANCE
PURSUANT TO RULE 2.120(j)(1)**


Applicant/Respondent, Grizzly Industrial, Inc., by its attorney, hereby submits this Notice of Reliance, pursuant to Rule 2.120(j)(1). Specifically, Applicant/Respondent relies on the following discovery depositions of Opposer/Petitioner's Officers:

1. The discovery deposition of Opposer/Petitioner's President and 30(b)(6) witness, Anthony F. Mlakar, taken by Applicant/Respondent on March 18, 2003.
2. The discovery deposition of Opposer/Petitioner's Vice President and 30(b)(6) witness, Robert A. Mlakar taken by Applicant/Respondent on March 18, 2003.

Copies of the deposition transcripts and exhibits thereto are attached hereto.

Date: 9/13, 2006

Respectfully submitted,

By: 


Joseph F. Schmidt
MICHAEL BEST & FRIEDRICH LLP
Two Prudential Plaza
180 North Stetson Avenue
Suite 2000
Chicago, Illinois 60601
(312) 661-2100
(312) 222-0818 (fax)
e-mail: chiipdocket@michaelbest.com
Attorneys for Applicant/Respondent
Grizzly Industrial, Inc

CERTIFICATE OF EXPRESS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EV840170676US addressed to: Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on 9-13, 2006.

DAWN TERNIG

(Typed or Printed Name of Person Signing Certificate)

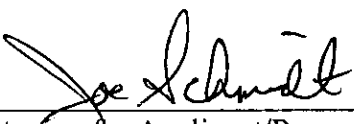
(Signature) 

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing
APPLICANT/RESPONDENT'S FIRST NOTICE OF RELIANCE PURSUANT TO RULE
120(i)(1) was served on Opposer/Petitioner via first class mail, postage prepaid, via U.S. Postal
Service, in an envelope addressed to:

Kenneth L. Mitchell
Woodling, Krost and Rust
Kirtland Office Complex
9213 Chillicothe Road
Kirtland, Ohio 44094

on 9/13, 2006.



Attorney for Applicant/Respondent

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PUCCEL ENTERPRISES, INC.,	)	CONSOLIDATED
)	
Petitioner,	)	Opposition No. 123,506
	)	Cancellation No. 31,984
vs.	)	Cancellation No. 32,024
	)	Cancellation No. 32,025
GRIZZLY INDUSTRIAL, INC.,)	
)	
Respondent.)	

- - - - -
DEPOSITION OF ANTHONY F. MLAKAR
Tuesday, March 18, 2003
- - - - -

Deposition of ANTHONY F. MLAKAR, called by the Respondent
for examination under the Federal Rules of Civil Procedure,
taken before me, the undersigned, Rebecca L. Brown,
Registered Professional Reporter, a Notary Public in and for
the State of Ohio, at the offices of Baker & Hostetler LLP,
3200 National City Center, 1900 East 9th Street, Cleveland,
Ohio, commencing at 3:25 p.m. the day and date above set
forth.

- - - - -

Dennis A. Parise & Associates
Court Reporters
Suite 500 · 1111 Chester Avenue
Cleveland, Ohio 44114-3535
216-241-5950 Fax 216-241-5952

APPEARANCES:

On Behalf of the Petitioner:

Joseph F. Schmidt, Esq.
Michael, Best & Friedrich LLC
401 North Michigan Avenue, Suite 1900
Chicago, Illinois 60611

On Behalf of the Respondent:

Kenneth L. Mitchell, Esq.
Woodling, Krost and Rust
9213 Chillicothe Road
Kirtland, Ohio 44094

ALSO PRESENT:

Robert Mlakar

- - - -

1 ANTHONY F. MLAKAR
2 called by the Respondent for examination under the
3 Federal Rules of Civil Procedure, after having been
4 first duly sworn, as hereinafter certified, was
5 examined and testified as follows:

6

- - - - -

7 MR. MITCHELL: This will also be
8 confidential and this witness will also
9 read.

10 MR. SCHMIDT: This is the 30(b)(6)
11 deposition of Pucel through Anthony Mlakar.

12

- - - - -

13

EXAMINATION

14 BY MR. SCHMIDT:

15 Q State your name, please.

16 A Anthony F. Mlakar.

17 Q And I'll show you what's been marked as Exhibit
18 R-1. I want to ask you if you're familiar with that,
19 if you've read it before. Take a moment.

20 A Yes. I saw that.

21 Q You see that there's a list of subject matter
22 regarding this case and your company listed there.

23 A Yeah.

24 Q And you're prepared to testify about those
25 matters?

1 A To the best of my knowledge.

2 Q Now, you've been involved with Pucel for how
3 long?

4 A Well, in my capacity since 1980 and I was in and
5 out of the company since '60, '61, different capacity
6 in 1960, I believe.

7 Q Are you president of the company?

8 A Yes.

9 Q Now, if you could find R-12 there. Should be in
10 this mix here. I think it should be a single page.

11 A Here it is.

12 MR. MITCHELL: Z14.

13 Q Yeah. Z14. Are you familiar with that
14 document?

15 A I saw it the other day.

16 Q Did you order it?

17 A Apparently, yeah. I was surprised with the date
18 because I didn't recall in one of our original
19 questions or answers that I had given that it was '95,
20 but we had it in the file and I didn't remember it.

21 Q So you've been aware of Grizzly Imports since at
22 least 1995, correct?

23 A Well, we did get this D&B and I'm normally the
24 one that would order it.

25 Q Do you know why you ordered it?

1 A No, I don't. We must have heard of the company
2 and ordered at least this summary document to see what
3 business they were in and that's about all that I can
4 remember about it.

5 Q Do you have any recollection of what business
6 they were in at the time of this in 1995?

7 A No. Other than this. I must have heard the
8 name because we got the report in our file and it said
9 power tools and retail and retail power tools and
10 wholesale woodworking and it just passed through me
11 and I didn't even remember having it. Somehow it was
12 in the file when they turned over documents to Ken
13 Mitchell.

14 Q Do you regularly order Dun & Bradstreet or other
15 types of reports for other companies that bear the
16 name Grizzly?

17 A I might have. I didn't have any in the file,
18 but I had a listing at one time of different Grizzlys.
19 I may have inquired, but I may have just looked at the
20 type of business they were in from their name.

21 Q Why did you do that?

22 A Just to see who they were, trying to keep - see
23 who was using the name Grizzly.

24 Q Were you concerned that it could possibly
25 conflict with your business?

1 A I would have to say probably. That would be in
2 the back of my mind.

3 Q With respect to Grizzly Imports, did you make a
4 determination then that this did not -- that Grizzly
5 Imports did not conflict with your business?

6 A I cannot say that I made that judgment. Somehow
7 it went out of my mind completely. This probably came
8 in and I set it down and you go about your business.

9 Q Well, you noticed that they were in retail power
10 tools and wholesale woodworking, metal working
11 machinery, correct?

12 A Correct. That's probably what I would have
13 looked at.

14 Q At the time that wouldn't have raised any
15 concern on your part?

16 A Not particularly because I would have acted upon
17 it.

18 Q If it did?

19 A If it did. I may have looked at the RET. I
20 know I asked the other day what's the RET stand for,
21 maybe in a different frame of mind, it was retail, and
22 I wouldn't have given as much thought to it as I
23 should have, let me just say that.

24 Q Did you ever hear of a Grizzly company selling
25 power tools and metal working machinery in the 1980's?

1 A Not in the 1980's.

2 Q Who decides who sends out - and let's split the
3 time period 1985 to 1990. Who made the decision at
4 that time who to send Pucel catalogs to?

5 A Our catalogs?

6 Q The Pucel catalog.

7 A It was more of - it was a joint effort you might
8 say. Someone would give us a lead, we would send the
9 catalog. I didn't myself type out the label. We had
10 mailing lists that we developed on our own in those
11 days, which if you don't keep up to date, they become
12 obsolete so it was a constant source.

13 Q Do you keep records?

14 A Some of our advertising you would get reply
15 cards, replies. We had the postcard packs that were
16 mailed out on a regular basis. We would get responses
17 on the postcards so we would mail out the catalog to
18 each one of them.

19 Q Do you keep records of who catalogs are sent to?

20 A No. We keep records on some of our higher
21 volume catalogs that we supply to our distributors.
22 We keep track of how many we send them, you know.
23 They ask for 100, they ask for 25, 50, which they pass
24 around, but we don't keep a listing of any kind as to
25 who we mailed to.

1 Q So do you recall sending a Pucel catalog in the
2 mid to late 1980's to a Grizzly Company in Washington
3 State?

4 A No.

5 Q You don't recall?

6 A No.

7 Q Do you recall ever receiving any correspondence
8 from a Grizzly Company in Washington State prior to
9 1990?

10 A No.

11 Q If you could look at Exhibit R-14, that's a
12 two-page letter like this. Keep that out too. We're
13 going to look at that in a moment.

14 MR. MITCHELL: I think that's it
15 there.

16 Q May 30th is the date. There's a couple of them.

17 MR. MITCHELL: That's it, yes.

18 Q Are you familiar with that letter?

19 MR. MITCHELL: Take a look at it
20 first.

21 A Yes.

22 Q Ulmer & Berne is a law firm that was
23 representing Pucel?

24 A Yes.

25 Q And you're familiar with Nicole Vickroy, I think

1 it is.

2 A I had met her.

3 Q And this is a letter that Nicole Vickroy sent to
4 Grizzly Industrial's attorney?

5 A I assume that, yes. That was the attorney.

6 Q Did you authorize Ulmer & Berne to send this
7 letter on behalf of Pucel?

8 A The letter specifically, no, but I requested
9 that they get in touch with Grizzly Industrial.

10 Q And did you approve of the May 30th, 2000 letter
11 being sent out?

12 A Well, I knew they were sending it. I didn't see
13 a draft of it.

14 Q Did you discuss the letter with your lawyers?

15 A I don't remember doing that, no.

16 Q Do you know what your lawyers were saying in the
17 letter?

18 A I seen it when I got the copy of it, yes.

19 Q And did you raise any objection with your lawyer
20 to that letter having been sent out or did you approve
21 of the letter?

22 Let me ask one question. Did you raise any
23 objection with your lawyers as to sending this letter
24 out?

25 A I don't remember making any comments about it,

1 no.

2 Q Is it fair to say that you, after having read
3 the letter that was sent out, approved of it having
4 been sent out?

5 MR. MITCHELL: I think I'll show
6 an objection here because I think he said
7 he didn't review a draft.

8 A No, I didn't. I think it went out -

9 MR. MITCHELL: And -

10 MR. SCHMIDT: What's the
11 objection?

12 MR. MITCHELL: I think the
13 objection is that it's confusing because
14 you asked him if there -

15 MR. SCHMIDT: Can you read the
16 question back?

17 MR. MITCHELL: Well, let me just
18 finish.

19 MR. SCHMIDT: No, you just have to
20 make the objection. You can't explain it.

21 MR. MITCHELL: You asked me what
22 the basis was.

23 MR. SCHMIDT: I didn't ask you the
24 basis. I just asked what the objection
25 was. That's all I need is confusing or

1 ambiguous or redundant or asked and
2 answered.

3 MR. MITCHELL: Ambiguous.

4 MR. SCHMIDT: So can we go back
5 now and read my question?

6 (Record read.)

7 A I can't say I approved of it, but I didn't read
8 it in depth because now that I see it, and I saw this
9 the other day, I didn't even have this in my files
10 either because I turned everything over that I had on
11 this matter two years ago or whatever, but I don't
12 like what's in here now, let me say that.

13 Q Were your lawyers acting on your instruction at
14 that time?

15 A Well, we sat down and had the meeting. They had
16 our catalog. They said they would write a letter to
17 them saying that, you know, we valued our Grizzly name
18 and the trademark and whatever else they say here to
19 the extent our client was aware of it. Don't they say
20 to cease using the mark and then please provide me
21 with a list of the goods using the mark since '83.
22 They don't make any other statement there.

23 Was there additional correspondence?

24 Q This was the first letter.

25 MR. MITCHELL: There was

1 additional, yeah.

2 THE WITNESS: Okay.

3 MR. MITCHELL: I think this is the
4 first letter.

5 Q You authorized - I shouldn't say that.

6 A This would have been as a result of our first
7 meeting.

8 Q That's the letter you produced and that's also a
9 letter you produced. There appears to be a string of
10 correspondence. Feel free to read that one too.

11 A This letter is more familiar to me and I so far
12 don't see anything that I would have had qualms about.
13 We objected to the use of the name Grizzly.

14 Q Did you see that letter before it went out?

15 A No, I can't say I did.

16 Q What exhibit is that?

17 A That's R-13.

18 Q Can we look at R-15, which is that list. The
19 2001 - first of all, there's a column of years and
20 then sales. Can I assume that these are gross sales
21 by Pucel?

22 A Yes.

23 Q And that the advertising - and these are in
24 dollars -

25 A Yes.

1 Q - of the advertising expenditures of Pucel?

2 A Yes.

3 Q And in 2001, for example, there's \$87,111 for
4 advertising.

5 A Yes.

6 Q Is it fair to say that approximately \$65,000 of
7 that are fees paid to Thomas Register for listings?

8 A 2001?

9 MR. MITCHELL: I'm going to object
10 to that because Bob has already - that
11 question's been asked and answered by Bob.

12 MR. SCHMIDT: He wasn't sure.

13 MR. MITCHELL: Okay.

14 A I think it was slightly less than the 65 in
15 those years as they keep increasing. It was probably
16 60, 59, 60.

17 Q How about in the years from 1983 through the
18 year 2000, looking at those numbers, starting in '83,
19 what part of the 44,000 do you think was the Thomas
20 Register?

21 A I'd say in those years we were spending about
22 20,000.

23 Q So about -

24 A So say half of that in '83.

25 Q So would the same be true in '84?

-

1 A I'd say in those early years, yes. I think it
2 was somewhere around \$20,000 a year that we were -
3 that their costs - same goods, but same goods were
4 advertised, same classifications, the catalog,
5 complete catalog was in place. So the prices were
6 less in those years, the cost of advertising.

7 Q And then -

8 A So I would say no more than 20 in those early
9 years.

10 Q Would a good part of the remainder be for
11 catalogs that you had printed up?

12 A There were catalogs, we did trade advertising,
13 display advertising.

14 Q What kind of trade advertising?

15 A In some of the publications, similar to that one
16 that you showed - *Metal Working*.

17 Q But not *Metal Working*?

18 A No. I don't remember ever advertising in there.

19 Q The notice of deposition - is that it?

20 A Yeah.

21 Q That's Exhibit R-1.

22 A R-1. Okay. Yes, I see they're listed.

23 Q Now you're looking at what page there?

24 A 3.

25 Q Page 3 under point number 15. Does this

1 represent the extent of your printed publication trade
2 advertising from '83 through 2001?

3 A It includes those. To the best of our knowledge
4 when we prepared this, those were the ads - or the
5 advertising that we did of those various publications
6 or directories.

7 Q These were all listed in your records?

8 A Yes.

9 Q And that's what you found?

10 A Yes. That's what we found.

11 Q You didn't find anything else?

12 A No.

13 Q Are you aware of any instances where anyone
14 purchased a product of Grizzly Industrial instead of
15 purchasing a Pucel product?

16 A No. There would be no way of knowing.

17 Q Are you aware of any instances where anyone
18 called or wrote to Pucel thinking that Pucel was
19 Grizzly Industrial?

20 A Yes.

21 Q How many instances did that happen?

22 A Well, I heard the question you asked and it
23 would be very difficult because we didn't accumulate
24 those as we have in this past couple of years. They
25 were coming in on a steady basis, but I couldn't even

1 say one a month or what, but we -

2 Q For how long has that been happening?

3 A More so in the last five, six years that we've
4 known about it.

5 Q Could you describe some of them to me? Is it a
6 phone call, a letter?

7 A Some were faxed to us, a lot of calls. More of
8 them would probably have been telephone calls.

9 Q Were you involved in any of those phone calls?

10 A No. I was just recently, just recently.

11 Q What happened?

12 A It was after five o'clock, I answered the phone,
13 someone asked for a particular product, "Are you the
14 Grizzly?" And I says "No, I'm not." They said,
15 "Well, we're looking for this" - well, they started
16 out saying they were looking for a saw, vacuum or dust
17 collector or something, I don't remember what it was,
18 and I just said, "No." I said, "We don't make that
19 and the company is using - that's our trademark" - I
20 think I said "That's our trademark and they're using
21 the same name." And I said, "I don't have the number
22 handy, but" - they said "That's all right. We know
23 who the other company is."

24 So they apparently chose to choose us first to
25 find out who's handling this product. So that was

1 about two weeks ago and that's the only call that I
2 got myself fairly recently. I'm usually told about
3 these things after the fact, you know.

4 Q Apparently in all instances, but that one where
5 you answered the phone, you found out after the fact?

6 A That one made my day when I left at 10 after
7 5:00. I should have left at five o'clock.

8 Q Is it fair to say that until your web site went
9 up, that Pucel's customer were industrial users?

10 A You know, industrial is a broad term.
11 Industrial usually indicates factories, and maybe back
12 in the '50s factory use, you know, for heavy carts and
13 that, but over the years the business grew into
14 warehouses, large and small, storage facilities. They
15 might need handling goods, platform trucks to use the
16 goods. We used to sell lumber trucks directly through
17 distributors to the lumber companies. We still have -
18 I believe the lumber truck is in our catalog, that's
19 how that product developed. It went into lumber
20 stores, retail and wholesale.

21 Q So in the '50s, just to reiterate, in the '50s
22 it was factory? I'm trying to see -

23 A I would say it started out that way. They were
24 called industrial goods. When I hear the word
25 "industrial," it's kind of a broad word today. We say

1 we're in industrial equipment, but it's warehouses,
2 there's laboratories, someone that needs a Formica top
3 work surface. Of course we talked about the retail
4 that we're into.

5 Q I want to start from the '50s though and work up
6 there, because the '50s it was factories. And then
7 what kept Pucel going in the '60s? You had
8 warehouses?

9 A It was a natural progression with the
10 distributors as we gathered more, each one specialized
11 in certain areas of business.

12 Q Then in the '70s what type of accounts dominated
13 the Pucel sales?

14 A I'd have to say the same probably.

15 Q Factories, warehouses?

16 A Laboratories, yeah. That covers it.

17 Q Then 1980 came along and what was the heart of
18 the sales business through the 1980's?

19 A It really hadn't changed. I can't see where it
20 changed it. It just grew into other areas -

21 Q Did it grow -

22 A - naturally.

23 Q Did it grow into other areas in the 1980's?

24 A Well, it would be a gradual thing over the '70s,
25 '80s and '90s. There was always distributors coming

1 in, "Do you make this?" "We got a customer who wants
2 five of these carts, can you put a wheel or a caster
3 on it that would be impervious or wouldn't scratch or
4 mar a floor?"

5 So basically it's the same goods that we always
6 made, just modifications to it or improvements on it,
7 you know. The wheel technology changed. You used to
8 have a steel and a rubber and then they went into
9 polyurethanes, polystyrenes, and all these various
10 plastic terms for non-marking for carpeting, oil
11 impervious technology, you know. So I don't see how
12 we could differentiate between the '50s to now, except
13 there's a broader market.

14 Q Except for the Internet possibly.

15 A Well, the Internet is a new development, yeah,
16 three, four, five years, how ever it's been. You
17 know, you've got - you're displayed on a screen. You
18 don't have to pick up a phone and order a catalog.
19 They see it right on the computer screen.

20 Q Traditionally who uses the Thomas Register?

21 MR. MITCHELL: I'm going to object
22 as asked and answered by Bob, but go ahead
23 if you can answer again.

24 A Everyone who has access to the books can or can
25 go to the library. That's an extensive library.

1 Right now it's around 30 some volumes. So for \$195
2 you can buy an old set each year and/or get the
3 CD-ROM, which you can fit in your pocket. Engineers
4 use it extensively, purchasing agents.

5 Q I would assume there's a certain core group of
6 people that use it.

7 A I would have no idea. We get a lot of leads
8 from Thomas, from all types of people inquiries.

9 Q What types of businesses are the inquiries from?

10 A It's really hard to say. It's hard to say. We
11 get -- since we're accepting credit cards now, we get
12 businesses that want to put it on their charge card or
13 they're individuals, I assume, buying for themselves,
14 and that's become an ongoing thing. There's more and
15 more of it.

16 Q Do you know approximately what percentage of
17 your sales to the total would come through sales
18 resulting from the Thomas Register?

19 A I couldn't answer that. I would have no way of
20 knowing.

21 Q Do you keep track of the source of sales?

22 A No. We know who we bill it to as far as Thomas
23 is concerned. We would know it by the order on-line
24 mechanism.

25 Q But you don't keep track of the number of --

1 A No. No. It's growing, but I couldn't say -
2 even guess at what our percentage would be. We know
3 directly now they got us through Thomas Register, but
4 they may have looked through one of these search
5 engines, and I'm not fully aware of all this
6 technology, and they go through our web site and
7 Thomas. It's kind of tied in, linked in together some
8 way, so I don't know what percentage comes from
9 someone looking in our book or on the CD-ROM disk or -

10 Q Does the largest percentage of sales to the
11 total come from the Thomas Register?

12 A The largest percentage of our sales?

13 Q Because you sell through the Internet, phone,
14 you have direct contact with customers, you sell
15 through catalogs. What is your best source in terms
16 of what sales method that you - let me put it this
17 way.

18 This is the question. What sales method
19 produces the greatest amount of income to Pucel?

20 A Where do those sales come from?

21 Q The means that they're made. Direct contact by
22 Pucel?

23 MR. MITCHELL: If you know.

24 A Catalog. Catalog, if you keep that -
25 differentiate that from directories, yes.

1 Q What would come next, directories? And by that
2 I would say is Global and C&H, if that's accurate. Do
3 you consider C&H and Global directories -

4 A We call them -

5 Q - or is the -

6 A - catalogs. I would call Thomas a directory
7 more.

8 Q When you say "catalogs," were you referring to
9 the Pucel catalog or to the Pucel catalog and -

10 A Both.

11 Q Combined?

12 A Both. Yes.

13 Q Because Global and C&H pass out your catalog?

14 A They pass out the catalogs.

15 Q So that would be number one source of sales?

16 A Yes.

17 Q The number two source would be the Thomas
18 Register?

19 MR. MITCHELL: If you know. If
20 you have to guess, then --

21 A Yeah. I don't like to guess who's number one
22 and number two because some of our customers have
23 their own catalogs and we get the orders from them as
24 well. I can't - I couldn't say one or two. I really
25 couldn't and that's not even to take into account

1 what's happening now with the Internet. It changes
2 the whole picture.

3 Q Do you know if Grizzly Industrial is in the
4 Thomas Register?

5 A No.

6 Q You don't know?

7 A I've never seen it. I don't know.

8 Q You never seen them in there?

9 A No.

10 Q Have you ever seen Grizzly Industrial at any
11 trade show that Pucel has ever attended?

12 A No.

13 Q Have you ever seen an ad for Grizzly Industrial
14 in any publication that Pucel has ever advertised in?

15 A Not that I'm aware of. At the same time, I
16 don't look at all those publications currently, but
17 I'm not aware of it, no.

18 You mean the publications that we have
19 advertised in -

20 Q Correct.

21 A - in the past? No, I've never seen it.

22 Q What type of business are your largest customers
23 engaged in?

24 MR. MITCHELL: Objection. That
25 was asked and answered by Bob.

1 Q Go ahead and answer.

2 A What -

3 Q Types of businesses, if you know.

4 MR. MITCHELL: Do you want to take
5 him individually then now? Some of the
6 questions have already been asked and
7 answered by our 30(b)(6) witness.

8 MR. SCHMIDT: Unless you're
9 instructing him not to answer, just let him
10 answer.

11 MR. MITCHELL: Well, do you want
12 him to just stop and now you're testifying
13 individually?

14 MR. SCHMIDT: No, I don't.

15 MR. MITCHELL: Go ahead and
16 answer.

17 A Could you repeat that again?

18 Q Take some of your larger accounts -

19 A Okay.

20 Q - and tell me the types of businesses your large
21 accounts are involved in, so you're not giving me
22 their names, but whether they're in the railroad
23 business or airline business.

24 A Our customers, the largest customers we have are
25 distributors.

- 1 Q Is that C&H and Global?
- 2 A No. No. I wouldn't necessarily say that
3 they're those.
- 4 Q Well, I know of one --
- 5 A As a whole, that might be true. Okay. Catalog.
- 6 Q Granger distributes products, is that the type
7 of customer you're talking about that's a distributor?
- 8 A Not necessarily. We have -- over the years we've
9 had some of our other distributors that sell all
10 around this area that can give us a lot of business
11 and they could be in those areas they specialize in
12 even, not necessarily in those areas that I mentioned.
13 They might be targeting any type of warehouse
14 facility. It could be industrial plants,
15 manufacturing plants, and they can give you an order
16 of 200 pieces of something and it amounts to a sizable
17 dollar.
- 18 Q And you have a good relationship with those
19 distributors?
- 20 A We have good relationships with them.
- 21 Q It's been a long-term relationship?
- 22 A In many cases.
- 23 Q In many cases. And they personally know you or
24 Robert?
- 25 A They know the goods, they know the phone number.
-

1 Q They know Pucel?

2 A They know Pucel. They know Grizzly. They know
3 Grizzly definitely. Many of them. Many of them, and
4 I can't produce it, but a lot of them just know us as
5 Grizzly, I have to say, put that - interject that
6 here, because that's the -

7 Q You would be remiss if you didn't interject
8 that.

9 A Yes.

10 Q Did your lawyer suggest that you interject that
11 somewhere?

12 A No, he didn't. No, he didn't. I see the mail
13 more recently firsthand as opposed to having someone
14 else slice it open and it's amazing how many envelopes
15 are typed that way, Grizzly, and checks are even
16 written Grizzly, Grizzly/Pucel. They know of our
17 company.

18 Q Is it fair to say that a large percentage of
19 your customers know of your company and who you are?

20 A Yes.

21 Q Have you asked any of your distributors or
22 customers to order a catalog from Grizzly Industrial?

23 A No.

24 Q Have you asked any of your distributors or
25 customers to get any information about Grizzly

1 Industrial?

2 A No.

3 Q The trade publications that you've advertised
4 in, which are listed on Exhibit 1 - is that number 25?

5 MR. MITCHELL: 15.

6 Q 15, other than the Yellow Pages, which your son
7 testified is regional in Ohio, you don't advertise in
8 the Yellow Pages outside of Ohio, do you?

9 A Internet.

10 Q Other than the Internet.

11 A Through one of our -- as part of our advertising
12 in the Yellow Pages, we have a presence of all of last
13 year on the .com, or whatever you call it, the
14 Internet Yellow Pages.

15 Q Other than the Yellow Pages and so forth, are
16 any trade publications there that you advertise in
17 national or are any of those local?

18 MR. MITCHELL: Do you want him to
19 go through each one and say if it's
20 national or local?

21 A *New Equipment Digest* is national.

22 Q Who reads *New Equipment Digest*?

23 A Who are they?

24 Q Who reads it?

25 A They have 100,000 some distribution, but I

1 couldn't - I would have no way of knowing.

2 Q Who picked *New Equipment Digest* to go into?

3 A They're a very well thought of publication.

4 Q In what circles?

5 A I'd say all circles because they feature - each
6 month they feature a different segment of business.

7 It could be electronics one month. They feature one
8 month material handling goods. I don't remember now,
9 but each month they have a feature of what they sell.
10 So they have a wide range of mailing -

11 Q Don't you -

12 A - distributor list.

13 Q Don't you go into *New Equipment Digest*,
14 *Industrial Equipment News*, *Industrial Literature*
15 *Review* because you're trying to reach a certain target
16 audience?

17 A We're not trying to be exclusive. I have to say
18 that. If anyone would read that ad and respond to
19 that.

20 Q You're not advertising in *Gentlemen's Quarterly*,
21 are you?

22 A No.

23 Q Why not?

24 A I don't think - I don't think that they're going
25 to -

1 Q You don't think the readers of *GQ* are
2 necessarily going to buy a cabinet?

3 A Probably not, but I'd like to sell to the
4 publisher. I'd like to sell to the publisher. I
5 don't know *GQ*, whatever *GQ* is.

6 MR. MITCHELL: It stands for
7 *Gentlemen's Quarterly*. It's a fashion
8 magazine.

9 Q I mean you're not in *Newsweek*, right?

10 A We couldn't afford it.

11 Q Couldn't afford it. You're not in the
12 newspapers, are you?

13 A We've advertised in the newspaper.

14 Q When was that?

15 A Probably didn't list them here, did we?

16 Q No.

17 A That was many years ago. Cleveland Plain
18 Dealer. They featured us one year. They put a little
19 - we bought six months of ads and it featured our
20 company with a little blurb.

21 Q Where in the paper did the ad appear?

22 A This was in the Cleveland - I believe it was the
23 Cleveland Press.

24 Q What section of that? What section of the
25 newspaper did the ad appear in?

1 A The business section, I believe. Next to the
2 business section.

3 MR. SCHMIDT: Do you want to take
4 a break, get a drink, go to the bathroom?
5 I can wrap it up.

6 (Recess had.)

7 Q Who are Pucel's main competitors?

8 MR. MITCHELL: Objection. Already
9 been asked and answered.

10 Q You can go ahead and answer.

11 A Answer? I think we mentioned them in these
12 documents here somewhere, but I think we consider
13 Lyons, Lista. I'm considering Grizzly Industrial to
14 be a competitor of ours. Hodge has been - makes
15 comparable equipment to ours, or did. They always
16 did.

17 Q Hodge would be a main competitor, correct?

18 MR. MITCHELL: Objection. You
19 asked the question and he answered it.

20 A I don't know.

21 Q Is Hodge a main competitor?

22 A Not anymore. I would say no.

23 Q Lyons, are they a main competitor?

24 A I would say Lyons.

25 Q Grizzly Industrial is not a main competitor, are

1 they?

2 A They're a competitor. It's a matter of degree.
3 I wouldn't have been, you know, saying it if I didn't
4 feel that they were taking some of our business. I
5 don't know how much Lyons might take away from us
6 because they may not do what we do. There's a couple
7 companies that just do bolt-on work and we don't
8 specialize in that.

9 So what one did I mention, what was it?

10 MR. MITCHELL: Do you want me to -

11 A Equipto or somebody.

12 MR. MITCHELL: Yeah. Equipto.

13 A I know we put some of them in one of those
14 answers there.

15 MR. MITCHELL: We would like to
16 designate Bob Mlakar to answer questions
17 about Pucel's web site because I think we
18 answered that in the interrogatories.

19 MR. SCHMIDT: Thank you for the
20 questions you answered.

21 - - - - -

22 (Deposition concluded at 4:20 p.m.)

23 - - - - -

24

25

Anthony F. Mlakar

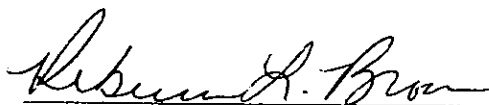
The State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga.)

I, Rebecca L. Brown, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named ANTHONY F. MLAKAR was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, employee of, or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney for any of the parties in the above-captioned action; I am not financially interested in the action; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D); nor am I otherwise interested in the event of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 3rd day of April, 2003.



Rebecca L. Brown, Notary
Public in and for the
State of Ohio.

My commission expires 6/5/05.

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PUCEL ENTERPRISES, INC.,	)	CONSOLIDATED
)	
Petitioner,	)	Opposition No. 123,506
	)	Cancellation No. 31,984
vs.	)	Cancellation No. 32,024
	)	Cancellation No. 32,025
GRIZZLY INDUSTRIAL, INC.,)	
)	
Respondent.)	

- - - - -
DEPOSITION OF ROBERT A. MLAKAR
Tuesday, March 18, 2003
- - - - -

Deposition of ROBERT A. MLAKAR, called by the Respondent for examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Rebecca L. Brown, Registered Professional Reporter, a Notary Public in and for the State of Ohio, at the offices of Baker & Hostetler LLP, 3200 National City Center, 1900 East 9th Street, Cleveland, Ohio, commencing at 9:45 a.m. the day and date above set forth.

- - - - -

Dennis A. Parise & Associates
Court Reporters
Suite 500 · 1111 Chester Avenue
Cleveland, Ohio 44114-3535
216-241-5950 Fax 216-241-5952

APPEARANCES:

On Behalf of the Petitioner:

Joseph F. Schmidt, Esq.
Michael, Best & Friedrich LLC
401 North Michigan Avenue, Suite 1900
Chicago, Illinois 60611

On Behalf of the Respondent:

Kenneth L. Mitchell, Esq.
Woodling, Krost and Rust
9213 Chillicothe Road
Kirtland, Ohio 44094

ALSO PRESENT:

Anthony Mlakar

- - - -

1 ROBERT A. MLAKAR

2 called by the Respondent for examination under the
3 Federal Rules of Civil Procedure, after having been
4 first duly sworn, as hereinafter certified, was
5 examined and testified as follows:

6 - - - - -

7 MR. SCHMIDT: Let the record show
8 that this is the 30(b)(6) deposition of
9 Pucel Enterprises, Inc. pursuant to a
10 notice served on Pucel's counsel, Mr.
11 Mitchell.

12 And maybe you could mark that as
13 number 1.

14 - - - - -

15 (Exhibit Mlakar R-1 was
16 marked for identification.)

17 - - - - -

18 EXAMINATION

19 BY MR. SCHMIDT:

20 Q Mr. Mlakar, I show you what's been marked as
21 Exhibit R-1. Are you familiar with that?

22 A Yes.

23 Q You've reviewed that before?

24 A Yes. I've seen it.

25 Q And there's a number of -

1 MR. MITCHELL: And if you could,
2 put on the record the confidentiality and
3 the request to read too.

4 Q Exhibit A to the notice of deposition contains
5 24 different categories of subject matter. Have you
6 reviewed those?

7 A Yes. I did read them.

8 Q And you're appearing here today on behalf of
9 Pucel to give testimony regarding the subject matter
10 listed in Exhibit A?

11 A That's correct.

12 Q Mr. Mlakar, what is your education after high
13 school?

14 A I went to college for four years and three years
15 of graduate school.

16 Q Where did you go to college?

17 A Borromeo Seminary College of Ohio.

18 Q And grad school?

19 A St. Mary's Seminary in Cleveland. Then I went
20 to a number of classes and courses in business. That
21 was at Tri-C.

22 Q Was grad school a business school, business
23 major?

24 A No, it wasn't. That was theology major.

25 Q And you're currently employed by Pucel?

1 A That's correct.

2 Q What position do you currently hold?

3 A I'm the vice president.

4 Q How long have you been vice president?

5 A Vice president for 13 years, approximately 13.

6 Q And how long have you been formally employed at
7 Pucel?

8 A I was employed off and on for 25 years.

9 Q So you worked there some when you were going
10 through school?

11 A That's correct.

12 Q And the past 13 years has been full time and
13 continuous?

14 A Yes. I was working full time even beyond that.
15 The 13 years was the position of vice president.

16 Q And what are your responsibilities at Pucel?

17 A I basically handle some of the purchasing, some
18 of the marketing. I have a part of all of the
19 different areas. I'm also the elected liaison between
20 the plant manufacturing facility and the office as
21 well.

22 Q And who do you report to?

23 A Tony Mlakar.

24 Q And who directly reports to you? If it's easier
25 for you, you can break it down by purchasing,

1 marketing groups.

2 A Who answers to me?

3 Q Yeah.

4 A I basically just get across the desk. It's a
5 family operation so we have everyone - I have an
6 open-door policy. So whenever issues come in, I take
7 everything as it comes in all areas.

8 Q Who's in charge of purchasing?

9 A That's split up between a few of us. Tony,
10 myself and sometimes others will do it if we're not
11 available.

12 Q But you and Tony are the main purchasing people?

13 A That's correct.

14 Q And what is it that you purchase?

15 A We purchase steel, all of the purchased parts,
16 casters, all the day-to-day operating goods,
17 packaging.

18 Q Does Pucel do all of its own manufacturing?

19 A No, we don't. 99 percent of it.

20 Q And you do that on site at Pucel's -

21 A That's correct.

22 Q - office and factory, correct?

23 A Yes. It's all one location.

24 Q The one percent that you contract out is for
25 what products?

- 1 A We incorporate other products from the outside
2 into our Grizzly Equipment and we consider that a
3 purchased product, that gets incorporated into our
4 product.
- 5 Q Pucel is located where?
- 6 A 1440 East 36th Street, Cleveland, Ohio 44114.
- 7 Q And you have executive offices at that location?
- 8 A Yes. Our offices are on the second floor.
- 9 Q And you have a factory at that location also?
- 10 A That's correct.
- 11 Q Do you have any other offices?
- 12 A No.
- 13 Q Any other factories?
- 14 A No.
- 15 Q And how many employees?
- 16 A 53.
- 17 Q Now, does anyone have an ownership interest in
18 Pucel other than the Mlakar family?
- 19 A There are some other stockholders.
- 20 Q Are there any other - are these individual
21 stockholders?
- 22 A That's correct.
- 23 Q Are there any other companies that hold any
24 interest in Pucel?
- 25 A No.

1 Q Are there any other companies that have any
2 interest in the outcome of these proceedings,
3 companies other than Pucel? Let me rephrase that.

4 Are there any companies that Pucel has any
5 relationship with that have an interest in the outcome
6 of these proceedings?

7 A Only insofar as the goods that we produce, you
8 know, and what we produce and how we produce it.

9 Q Did you review any documents preparing for your
10 deposition?

11 A Yes, I did.

12 Q Do you remember what documents you looked at?

13 A I looked at some of the interrogatories and
14 this, Exhibit A.

15 Q Did you consult with any other witnesses or
16 potential witnesses in this case?

17 A Yes.

18 Q And who did you talk to?

19 A I talked with Papp Straub, Jeanette Papp.

20 Q And when did you do that?

21 A I just talked to her briefly. It was - she had
22 some concerns. I guess someone from your office had
23 contacted her and she was upset.

24 Q So this was recently?

25 A Just recently.

1 Q Within the past month or so?

2 A Yes.

3 Q And what was she upset about?

4 A She was upset that I guess the office had called
5 her and asked her questions over the phone and she was
6 upset that it wasn't exactly what she said.

7 Q Did she initiate the call to you?

8 A Yes.

9 Q And what was the result of the call?

10 A I don't know. I don't know what she -

11 Q Her call to you, what was the result of her call
12 to you?

13 A I didn't say anything. She was just telling me
14 how upset she was. That was it.

15 Q Did you tell her to do anything?

16 A No.

17 Q Did you put Miss Papp in touch with Mr.
18 Mitchell?

19 A Yes, I did.

20 Q Do you know if Mr. Mitchell is representing
21 Jeanette Papp?

22 A No, I don't.

23 Q Do you know what the circumstances are that
24 involve Jeanette Papp in this case?

25 A I think Jeanette is actually the one that was

1 put on record as to who brought the confusion of
2 Grizzly Equipment.

3 Q What do you mean by "brought the confusion"?

4 A Well, she's the one that brought it to our
5 attention, the catalog.

6 Q What confusion did she bring to your attention?

7 A Well, the whole notion that they were using the
8 Grizzly mark, the same Grizzly mark that we have, both
9 in word and the grizzly bear symbol.

10 Q When you say "they," you're referring to Grizzly
11 Industrial?

12 A Pardon me?

13 Q When you refer to "they," you're referring to
14 Grizzly Industrial? I think in your answer -

15 A They was Jeanette sent the catalog to me. Not
16 Grizzly Industrial.

17 Q Papp sent a Grizzly Industrial catalog to you?

18 A Yes.

19 Q Do you know when?

20 A '99 or 2000.

21 Q And she sent it to you?

22 A Not me specifically. It came to the office.

23 Q Do you know if she contacted anyone at the
24 office in connection with sending the catalog?

25 A Oh, she had mentioned it to me.

- 1 Q What did she say to you?
- 2 A She said I received a catalog that had the same
3 Grizzly on it as ours and she thought I might want to
4 see it.
- 5 Q Was she referring to a picture or design or a
6 word? Do you know?
- 7 A The word and the grizzly bear she was referring
8 to.
- 9 Q Did she say that she was confused?
- 10 A She said when she opened it, the first thing she
11 thought of was that what did we do, get a new catalog.
12 That was her response to me.
- 13 Q Now, before Miss Papp sent you that Grizzly
14 catalog, had you ever spoken to her about Grizzly
15 Industrial?
- 16 A No.
- 17 Q Do you know if anyone had spoken to Miss Papp
18 about Grizzly Industrial?
- 19 A To my knowledge, nobody had.
- 20 Q Do you know if anyone asked anyone at Papp
21 Straub to order a Grizzly Industrial catalog?
- 22 A That I don't know.
- 23 Q Did Miss Papp ever say anything to you about
24 having ordered a Grizzly catalog?
- 25 A No, she did not.

1 Q Is it your understanding that Miss Papp realized
2 after looking at the catalog that it was not a Pucel
3 catalog?

4 A She did. As she looked through it, she knew -
5 well, she's known us for a number of years and knows
6 what we sell.

7 Q And that led her to believe that it was not your
8 catalog?

9 A Well, she looked - as she went through the cover
10 and went through it a little bit, she realized the
11 location of it and she mentioned the location was not
12 in Cleveland, Ohio.

13 Q Were there any other communications with Miss
14 Papp about this incident of her receiving a Grizzly
15 Industrial catalog?

16 A No.

17 Q What did you do with the catalog?

18 A I kept it and actually we brought it down with
19 us to Washington. That's the one that you saw that we
20 used as an exhibit.

21 Q At Mr. Balolia's deposition?

22 A That's correct.

23 MR. SCHMIDT: Go off for a second.

24 - - - - -

25 (Exhibit Mlakar R-2 was

1 marked for identification.)

2 - - - - -

3 Q We have placed in front of you what's been
4 marked as R-2. Can you identify that?

5 A Those are the stickers that are put on all of
6 our Grizzly Equipment that leave our place.

7 Q Is it put on every - are those stickers put on
8 every item that Pucel -

9 A Yes, they are.

10 Q Including the wood products?

11 A Yes.

12 Q They would be put on tabletops?

13 A Yes.

14 Q And workbenches?

15 A Yes.

16 Q And where do you affix the stickers to the
17 products?

18 A Typically right onto the front of the surface.
19 If it's on a storage cabinet, it goes on the top. If
20 it's on a cart, it will go on the face. On a
21 workbench, on the face. Platform truck, on the
22 handle.

23 - - - - -

24 (Exhibit Mlakar R-3 was
25 marked for identification.)

1

2 Q You have what's been marked as Exhibit R-3 which
3 consists of three pages. I'm just going to use the
4 last digits of the production numbers, 356, 357 and
5 358. Can you identify that, please?

6 A This looks like some advertising that we have in
7 the Ameritech Industrial Guide. At least that's
8 what's shown on the first two. The last one doesn't
9 really identify where it's actually printed.

10 MR. MITCHELL: 358 you mean?

11 THE WITNESS: 358.

12 Q Does 358 look like an advertisement that would
13 appear in the Yellow Pages?

14 A That's correct.

15 Q This appears to be a proof from 1991, R-3.

16 A Yes.

17 Q And Pucel advertises in the Industrial Yellow
18 Pages?

19 A Yes.

20 Q Does Pucel advertise in any other types of
21 Yellow Pages than industrial?

22 A Well, it would be in the regular Yellow Pages
23 and White Pages as well.

24 Q You wouldn't have an advertisement in the White
25 Pages though?

1 A No. Not an ad or anything, no. Just have our
2 name.

3 Q And in the regular Yellow Pages, would you have
4 an advertisement or just your name?

5 A I'm not sure. I thought we had a little
6 advertisement block in the Yellow Pages. It's
7 something similar to 357.

8 Q Where in the center of 357 it refers to Pucel
9 Enterprises, Inc., designing, engineering, development
10 and manufacturing?

11 A Probably a small block like that.

12 Q Like that?

13 A Probably would be something smaller.

14 Q And that's what you think would go into the
15 Yellow Pages?

16 A If I did, that's what it would be.

17 Q If you did?

18 A Yeah. It would be a small little ad like that
19 or a bold listing.

20 Q And document number 356 is the type of
21 advertisement that you would carry in the Industrial
22 Yellow Pages?

23 A My ads change all the time so it's not - it's
24 typical.

25 Q I'm just asking if this is representative of the

1 type of ad that you would run in the Yellow Pages
2 Purchasing Guide Industrial Section.

3 A Yes. It is good size. Yes. That's typically
4 the average size that we do. The content changes, of
5 course, from time to time.

6 Q And what geographic area is covered by the
7 Yellow Pages that you currently advertise in?

8 A That I'm not sure.

9 Q Was it the Cleveland area?

10 A I'm not sure. I think it goes in a few of the
11 outer regions other than just the Cleveland area.

12 Q It's in the Ohio area; is that correct?

13 A I think so. I'm not sure.

14 Q You don't advertise in the Yellow Pages that
15 cover any states outside of Ohio, do you?

16 A No.

17 Q I think most of your ads in your catalog refer
18 to designing, engineering, development, manufacturing,
19 correct?

20 A That's something that we've always had on our
21 logo. On our letterhead we always put that on there.
22 Being a manufacturing facility, you have to be capable
23 of doing those three things.

24 Q Do Pucel's customers request special orders?

25 A Occasionally. Sometimes they just put options

1 on the basic unit. They might put some options on
2 each of the items.

3 MR. MITCHELL: Can I ask for a
4 break?

5 MR. SCHMIDT: Yes.

6 (Recess had.)

7 - - - - -

8 (Exhibit Mlakar R-4 was
9 marked for identification.)

10 - - - - -

11 Q Before the break we were discussing the special
12 orders and designing, we had just started, and I
13 thought it might be easier if we look at the Pucel
14 catalog, which we've marked as R-4. You recognize
15 that, right?

16 A Yes.

17 MR. SCHMIDT: Go off the record
18 for one second.

19 (Discussion had off the record.)

20 Q Going to page 1 of the catalog under the front
21 cover, the heading on that page is "Custom Design and
22 Specialty Services." Do you see that?

23 A Yes.

24 Q What percent of the total are custom design and
25 specialty product services?

- 1 A To give a percentage, I can't give it exactly.
2 We sometimes call custom work anything that might have
3 some modification to one of our standards, in what we
4 consider a standard in the catalog, but on the
5 percentage of business, I don't know.
- 6 Q Well, the catalog carries what you would refer
7 to as some standard products of the type you sell.
- 8 A Yes.
- 9 Q And do you stock those products?
- 10 A No, we don't. We stock the parts ready for
11 assembly, but it all depends on - someone might want a
12 location different. It's the same item, but they
13 might want to put a coffeemaker on one of the shelves
14 and it has to be a couple inches higher depending on
15 what they're using it for. So it all depends on what
16 they're using it for.
- 17 Q So do most orders involve some modification?
- 18 A No.
- 19 Q Would half of the orders involve some
20 modification?
- 21 A No.
- 22 Q What percentage would you think would require
23 modification?
- 24 A I don't know the percentage.
- 25 Q How much custom designing do you do?

1 A Percentage wise or -

2 Q Yes. To the total. Percentage to the total.

3 A I don't know.

4 Q Does Pucel have any salesmen that are employed
5 by Pucel?

6 A Not specific duties. We have men in the office
7 that actually handle some of the customer service and
8 the phone work.

9 What do you mean by "salesmen"? That's pretty
10 broad.

11 Q Who sells Pucel's products?

12 A Actually, our distributors are the ones who sell
13 the products and the Internet sells the products. All
14 Grizzly products are not only in the catalog, but also
15 on the web site.

16 Q Looking at Exhibit R-2, is that the current
17 label that Pucel uses today?

18 A Yes, it is.

19 Q Are there any other labels or stickers that
20 Pucel uses besides the type shown in R-2?

21 A That goes on the product. We do have the bear
22 symbol and the Grizzly mark on the cartons themselves
23 as they go out. They're usually averaging about 12
24 inches in diameter on the carton.

25 - - - - -

1 (Exhibit Mlakar R-5 was
2 marked for identification.)

3 - - - - -

4 Q We have placed in front of you Exhibit R-5 which
5 is document number 056.

6 A Yes.

7 Q Is this a page from a Pucel catalog, can you
8 tell?

9 A Yes. It's from the Pucel Grizzly Equipment
10 catalog.

11 Q And the top refers to steel shop equipment.

12 A Yes.

13 Q Is steel shop a place? How would you define
14 steel shop?

15 A Steel shop is actually identifying the type of
16 equipment of what it is, not specifically where it
17 belongs, but it gives that image of durability.

18 Q So this is steel equipment and you're referring
19 to it as steel shop equipment as opposed to a steel
20 shop?

21 A Right. It's representing the equipment. Yes.

22 Q And these products shown in R-5, do you know
23 where they would be used?

24 A These can be used in many different areas. We
25 have - it can be used in a plastic working area. It

1 can be used in electronic assembly area. It can be
2 used in woodworking, steel working. Any place where
3 you would need material handling or industrial
4 equipment, but not limited to those areas.

5

- - - - -

6

(Exhibit Mlakar R-6 was

7

marked for identification.)

8

- - - - -

9 Q We've placed in front of you Exhibit R-6 which
10 appears to be document number 000. Can you identify
11 that?

12 A Looks like somebody was trying to get some
13 insurance on an item that was supposedly our
14 equipment. By the looks of it, it was not our
15 equipment.

16 Q Have you ever seen this letter before?

17 A Yes.

18 Q Did you respond to it?

19 A No, I personally did not.

20 Q Do you know if Pucel responded to it?

21 A I don't know. Tony might have.

22 Q I notice in the heading that it says "Grizzly
23 Equipment Manufactured by Pucel Enterprises, Inc."

24 A Yes.

25 Q Does that name, Grizzly Equipment Manufactured

1 By Pucel Enterprises, Inc., appear on any of your
2 catalogs?

3 A Yes.

4 Q The newer catalogs?

5 A Yes. It has "Grizzly Manufactured By Pucel."

6 MR. SCHMIDT: Do you have a new
7 catalog around?

8 MR. MITCHELL: I think we do.
9 Yeah.

10 A It's the same cover as this one.

11 Q When you say "this one," you're pointing at, I
12 think, Exhibit R-4.

13 MR. MITCHELL: I think this is the
14 - if we could go off the record for a
15 second.

16 (Discussion had off the record.)

17 Q I think you said that the catalog refers to
18 Grizzly Equipment Manufactured By Pucel Enterprises,
19 Inc.

20 A Yeah. A manufacturer of material handling and
21 industrial equipment. People know us by the Grizzly
22 trademark and then Pucel is the company name.

23 Q But nowhere on the catalog does it say "Grizzly
24 Equipment Manufactured By Pucel Enterprises, Inc.,"
25 does it?

1 A This one does not.

2 Q Isn't that name, Grizzly - isn't the way the
3 name is displayed, "Grizzly Equipment Manufactured By
4 Pucel Enterprises, Inc.," something your lawyer
5 recommended to you using since this proceeding
6 started?

7 A No. No. Not at all.

8 Q Can you point me to a document where your name
9 is - Pucel's name is displayed as Grizzly Equipment
10 Manufactured By Pucel Enterprises, Inc.?

11 A Right now give you a document or tell you -
12 what's the question?

13 Q Do you have any documents in front of you or are
14 you aware of any documents that you might have
15 produced to me that show the name Grizzly Equipment
16 Manufactured By Pucel Enterprises?

17 MR. MITCHELL: Can I see this for
18 a second?

19 Q Are you aware of any such documents?

20 A I do know that we, over the period of time, have
21 acquired - some people sent in checks, Grizzly
22 Equipment, with our address. Some just simply put
23 Grizzly. Some put Grizzly Equipment Manufactured By
24 Pucel. We advertise heavily in some of our
25 publications that have Grizzly Equipment Manufactured

1 By Pucel. So it's something in our advertising that
2 they would see.

3 Q How long has Pucel been saying Grizzly Equipment
4 Manufactured By Pucel? Is that within the last two
5 years or so?

6 A No. That's - I've always known it as Grizzly
7 Equipment Manufactured By Pucel.

8 - - - - -

9 (Exhibit Mlakar R-7 was
10 marked for identification.)

11 - - - - -

12 MR. MITCHELL: That's two pages,
13 isn't it, R-7?

14 MR. SCHMIDT: Yeah.

15 Q R-7 is document number 002 and 003. Mr. Mlakar,
16 can you identify Exhibit R-7?

17 A This looks like a request for quote from a
18 company called Supply Depot, Incorporated and
19 obviously they sent it to us by mistake because it
20 should have - these are not our items necessarily in
21 our catalog with these model numbers.

22 Q How do you know it was sent to you?

23 A It was faxed over. That's the only way that we
24 would have received it.

25 Q Do you see in the fax transmittal sheet, fax

1 number 216-881 up here? Is that Pucel's fax number?

2 A That's correct.

3 Q Do you know who Supply Depot is?

4 A Yes. They're a distributor of -- they're one of
5 our customers. They distribute our material handling
6 and industrial equipment, all the Grizzly Equipment.

7 Q Let's go back for a moment to Exhibit R-6. Have
8 you ever heard of Industrial Appraisal Company?

9 A No.

10 Q Do you know if your father has?

11 A No, I don't.

12 Q Do you know if Pucel has ever done any work with
13 Industrial Appraisal Company?

14 A None that I'm aware of.

15 Q Now, looking at Exhibit R-7, Supply Depot, you
16 said it is a seller of Pucel's products.

17 A Yes.

18 Q Or distributor.

19 A Distributor. That's correct. The name sounds
20 familiar.

21 Q Do you know for how long?

22 A I do not.

23 Q Do you know who Betty Byron is?

24 A No, I don't.

25 Q Did you ever see R-7?

1 A When?

2 Q Did you personally see Exhibit R-7 before I
3 showed you today?

4 A I've seen items like this over a period of
5 years. Specifically I'm sure that I have, but I don't
6 look at the detail of it.

7 Q Do you know if there was any response to this?

8 A I don't know.

9 Q Do you know who would handle that?

10 A Typically if someone in the office would receive
11 it, as a courtesy, we would fax it back and say that
12 you're requesting - you're confused with the company,
13 this should not have been sent to us.

14 Q Have you ever seen or signed any such letters?

15 A No.

16 Q Who signs those letters?

17 A Someone in the office might just send it by fax.
18 They might not even sign it. They might just write
19 across that it's not ours.

20 Q Do you know if you keep copies?

21 A Some of them obviously like this. I'm sure they
22 wouldn't have kept all of them.

23 Q Do you know if you keep copies of the responses?

24 A That I'm not sure.

25 MR. SCHMIDT: Ken, do you know if

1 you've produced any responses? There's a
2 number of these documents with no
3 responses.

4 MR. MITCHELL: No. I don't think
5 we have produced any responses.

6 Q Can you look in your files and determine the
7 type of documents from Supply Depot that you think was
8 misdirected to Pucel?

9 A Yes.

10 MR. MITCHELL: Tony Mlakar may be
11 able to handle these actual confusion type
12 questions better.

13 - - - - -

14 (Exhibit Mlakar R-8 was
15 marked for identification.)

16 - - - - -

17 Q R-8 is document number 004. Can you identify
18 R-8, Mr. Mlakar?

19 A Yes.

20 Q And what is it?

21 A It's one of our catalog request forms that
22 someone in the office had filled out and it was
23 obvious that they were looking for Grizzly Industrial,
24 but one of the people - what they did was if you're
25 interested in material handling, we'll send you a

1 catalog and a price list and that's what they did and
2 it was sent on 10-18-2000.

3 Q So at the bottom it's under new customer, how
4 did you hear about us?

5 A Well, typically when someone asks for a catalog,
6 we try to see how our marketing - you know, some of
7 the areas, so what we do is we have them fill this in.
8 It's something we developed a number of years ago.

9 Q Do you know if this was a phone request?

10 A Yes, it was a phone.

11 - - - - -

12 (Exhibit Mlakar R-9 was
13 marked for identification.)

14 - - - - -

15 Q Can you identify R-9? It's document number 005.

16 A I thought it was mine at first. It's not mine.
17 I can tell by the model number. It's something from,
18 looks like, the Internet of a two-shelf cart.

19 Q There's Jim on here, it says "Jim, this is the
20 cart we spoke about. Can you come up with anything?"

21 A Jim is one of the people in our office. They're
22 probably talking about a Grizzly cart came to Grizzly
23 Equipment, Grizzly, and they didn't know what he was
24 talking about, or she, it looks like Melissa, and so
25 he probably said give me more information and so she

1 faxed it over and said take a look at it.

2 - - - - -

3 (Exhibit Mlakar R-10 was
4 marked for identification.)

5 - - - - -

6 Q You're looking at what's been marked as Exhibit
7 R-10. Can you identify it?

8 A Yes.

9 Q What is it?

10 A It looks like a request for a quote from one of
11 our distributors who faxed us for equipment that was
12 not ours. She was obviously confused and sent it to
13 us instead of Grizzly Industrial because we're
14 referred to as Grizzly with them.

15 Q Who is FindMRO.com?

16 A It's actually a division that was Granger
17 Company.

18 Q Did Pucel do business with Granger?

19 A Yes.

20 Q Does Pucel do business with FindMRO?

21 A It's the same company. It was a division.

22 Q Who is Matt Hauck, H-A-U-C-K?

23 A I don't know who it is personally. Must have
24 been someone in purchasing.

25 Q How long has Pucel done business with Granger?

1 A I'd say at least 15, 20 years.

2 Q Are you familiar with any people at Granger?

3 A Not specifically. I have given sales meetings
4 to a group of their people.

5 Q At Granger?

6 A One of their offices.

7 Q Are they familiar with Pucel's product line?

8 A Yes, they are.

9 Q Do you find it kind of surprising then that they
10 would fax Pucel and list Grizzly Industrial and list
11 parts that Pucel doesn't sell?

12 A I think the confusion part was the mark itself
13 and the trademark name that we go under of Grizzly and
14 the bear symbol, that's what they're familiar with, so
15 when they saw Grizzly, they turn and fax it over to
16 us.

17 Q You said that they're familiar with your product
18 line. You believe that Granger is familiar with
19 Pucel's product line?

20 A Um-hmm.

21 Q Don't you find it kind of surprising that
22 they're asking Pucel for products that Pucel does not
23 sell?

24 A We used to have a lot of options that can go on
25 any of our equipment and we've done that before, so

1 it's not unusual for us to be able to quote items that
2 go on ours. It's not unusual at all.

3 Q Are the items listed in this - I don't know if
4 this is a fax or an e-mail. Let's call it a request
5 for quotation. Are the items listed in this request
6 for quotation something that Pucel would sell?

7 A We could.

8 MR. MITCHELL: I have the original
9 here and it looks like the top does, in
10 fact, have fax identification.

11 MR. SCHMIDT: Okay.

12 Q When you look down under the items, about the
13 fifth one down, small replacement blades and then
14 large replacement blades -

15 A Yes.

16 Q - do you know what they're referring to?

17 A Probably on a machine cutting tool of some sort.

18 Q Does Pucel sell blades?

19 A We don't sell blades, but we have - we sell
20 things like vices and rules and things that are
21 incorporated within our product as options.

22 Q Are those in your catalog?

23 A No, they're not. Well, the vices are. The tool
24 cabinets, the floor locks, the different casters,
25 they're all in our catalog, but it's not unusual for a

1 customer to request us to actually supply and
2 incorporate within our product all types of options.

3 Q Where do you get these options from?

4 A All over. I go right to the manufacturers for
5 some. Other times through distributors for that
6 product.

7 Q So if a company like Granger wanted some
8 replacement blades and they listed them as Grizzly
9 Industrial, might they ask you to ship some Grizzly
10 Industrial replacement blades to them with some other
11 equipment?

12 A That's what they were trying to do here, wanted
13 us to supply them with it. They know that we have
14 workbenches and cabinets and carts, so they wanted us
15 to supply them with this.

16 Q They know that you don't have blades though,
17 correct?

18 A This person obviously didn't know that we
19 specifically didn't have the blades to offer.

20 Q Well, don't the people that you work with at
21 Granger understand that some of the things they ask
22 for you get from other sources?

23 A Some might not and some don't even care, they
24 just want it. They want it incorporated into their
25 product and sent right to them or their customer.

1 Q And you don't know what the situation is?

2 A No, I don't.

3 Q With R-10, do you?

4 A No.

5 Q You don't know that they were confusing Grizzly
6 Industrial and Pucel, do you?

7 A I believe they were.

8 Q But you don't know, do you?

9 A Because they would not have sent us the fax if
10 they weren't confused.

11 Q What do you think they were confused about?

12 A They were confused with the company, who to
13 direct it to with our marks.

14 Q Do you think this fax should have been sent to
15 Grizzly Industrial?

16 A Yes. Based on the - because I know the products
17 that they're asking for specifically.

18 Q Well, you said that a company like Granger would
19 ask for products other than what's in your catalog and
20 ask you to supply them, correct?

21 A Um-hmm.

22 Q How do you know that they're not asking you to
23 supply these Grizzly Industrial products to them?

24 A Because I see that they have none of our items
25 in this particular list at all.

1 Q Could this request for a quote have been part of
2 another order to Pucel?

3 A That I don't know.

4 Q So you didn't talk to Matt Hauck about this, did
5 you?

6 A No.

7 Q And do you know who Rich Porter is?

8 A No, I don't.

9 Q You didn't talk to anyone at Granger about
10 this -

11 A No, I didn't.

12 Q - quote?

13 Do you know if anyone at Pucel did?

14 A I don't know.

15 Q Granger is a good customer, correct?

16 A Fairly good, yes.

17 Q Wouldn't you expect to respond to something like
18 this?

19 A Well, what I said was typically they might just
20 call them up and say there was confusion.

21 Q Well, you keep referring to confusion. You
22 don't know if anyone's confused.

23 A Well, we knew they were confused because they
24 had faxed it to us.

25 Q How could you know what someone else is

1 thinking?

2 A Well, from the act in which they had faxed it
3 over. If there was no confusion, they would have sent
4 it right to the source in Washington.

5 Q Maybe they wanted you to supply these products.
6 Is that a possibility?

7 A Could be.

8 Q You do supply products that you don't
9 manufacture, right?

10 A That's correct.

11 Q And you do supply products that are not in your
12 catalog.

13 A That's correct.

14 - - - - -

15 (Exhibit Mlakar R-11 was
16 marked for identification.)

17 - - - - -

18 Q Let's see. R-11 is 008 and 009 for document
19 numbers and this is a document, I believe, that - it
20 is, because these are Pucel's production numbers. Do
21 you know what this is referring to, R-11?

22 A It looks like search results from different
23 companies with Grizzly.

24 Q With Grizzly as part of their name?

25 A That's correct.

1 Q Would you have ordered this?

2 A No, I did not.

3 Q The list contains quite a few other businesses
4 that use the name Grizzly as part of their name,
5 correct?

6 A Yes.

7 Q And some are obvious as to the services. For
8 example, about ten down there's Grizzly Auto Repair.
9 That's probably an auto repair shop. And others are
10 not so obvious, are they, as to the nature of
11 business?

12 A Most you can glance through and see what their
13 line of business is.

14 Q Has Pucel ever asked any of these companies to
15 stop using the Grizzly name?

16 A No. We have not on this list because these
17 people on the list, they don't have the same mark,
18 they don't have the same goods.

19 Q What do you mean by that?

20 A That we would have. Specifically the goods.

21 MR. MITCHELL: Can I ask for one
22 more break?

23 (Recess had.)

24 Q If you go to the page 009, the second page,
25 probably about ten down, there's listings for Grizzly

1 Manufacturing, Inc. and Grizzly Manufacturing Co. in
2 Lake City, Florida. Are you familiar with that
3 company?

4 A No.

5 Q Do you know what kind of business they're in?

6 A No, I don't.

7 Q Have you ever received any letters, notes, phone
8 calls, anything of the sort from anyone referring to a
9 Grizzly company other than Grizzly Industrial?

10 A None that I'm aware of.

11 - - - - -

12 (Exhibit Mlakar R-12 was
13 marked for identification.)

14 - - - - -

15 Q Looking at Exhibit R-12, can you identify that?

16 A This is a Dun & Bradstreet done on a Grizzly
17 Imports, a D&B report.

18 Q Was this done by Pucel?

19 A Yes.

20 Q How can you tell?

21 A It has - that must be our subscriber number.

22 It's got Tony Mlakar's name on it.

23 Q Have you ever seen this before?

24 A Yes.

25 Q Do you know when?

1 A No, I don't.

2 Q Would it have been on or around March 11, 1995
3 which is listed as the date printed?

4 A It could have been around there. Sometimes
5 these are taken and I don't necessarily see all of
6 them that are printed.

7 Q Do you know why Tony would have ordered this?

8 A Periodically he'll just do a D&B not only on
9 some of our customers, but on others as well. So he
10 must have requested this for some reason.

11 Q When was the first time you heard of Grizzly
12 Imports?

13 A '97, '98.

14 Q So you don't think you saw this D&B in 1995?

15 A I think I might have, but it wasn't of much
16 interest to me. We have a lot of paper that comes
17 over, a lot of information, and specifically I don't
18 remember in detail about this particular sheet.

19 Q Do you know what kind of business Grizzly
20 Imports is involved in?

21 A We just knew by the name. You could tell the
22 imports. I don't really know - it was obviously
23 imported goods.

24 Q Has Pucel ever received any offers to purchase
25 its company?

1 A Pardon me?

2 Q Has Pucel ever received any offers from any
3 companies to purchase Pucel?

4 A Yes.

5 Q How many?

6 A That I don't know.

7 Q Has Pucel ever received any offers from any
8 companies that has the name of Grizzly as part of the
9 company name?

10 A None that I'm aware of.

11 - - - - -

12 (Exhibit Mlakar R-13 was
13 marked for identification.)

14 - - - - -

15 Q Are you familiar with the letter marked as
16 R-13?

17 A Yes, I have seen it.

18 Q Did you ask that that letter be sent?

19 A Tony handled this.

20 Q Are you familiar with the content of this
21 letter?

22 A Yes.

23 Q And do you approve of the content or should I
24 say did you approve of the content at the time it was
25 sent?

1 A Approve the content?

2 Q Of the letter.

3 A I never specifically saw the letter before it
4 was sent.

5 Q You didn't see it until after it was sent?

6 A Yes. I never saw it before this.

7 - - - - -

8 (Exhibit Mlakar R-14 was
9 marked for identification.)

10 - - - - -

11 Q Are you familiar R-14?

12 A I have seen this.

13 Q You have or haven't?

14 A I have.

15 Q Did you approve of it before it was sent out?

16 A No, I did not.

17 Q Would Tony -

18 A I saw it afterwards.

19 Q Would Tony have approved it?

20 A He might have.

21 Q Would anyone other than you and Tony approve of

22 a -

23 A No.

24 Q - lawyer letter going out?

25 A No.

1 Q Have you had a chance to read the letter now?

2 A Okay.

3 Q Do you approve of the content of Exhibit R-14?

4 MR. MITCHELL: Now you mean?

5 MR. SCHMIDT: Now.

6 A No, I don't.

7 Q Why not?

8 A Right when I first read the second paragraph, I
9 don't know where this person, Nicole, received this
10 information, but she said "While we do not have a
11 problem with your client's use of Grizzly in
12 conjunction with woodworking equipment, we are
13 extremely concerned with" - and then she went into
14 material handling and industrial equipment. I have a
15 problem with that line.

16 Q What problem?

17 A I do have a problem with them using the word
18 "Grizzly" in connection with other goods and using the
19 bear symbol.

20 Q When you say "other goods," are you referring to
21 woodworking equipment?

22 A Well, I believe the woodworking equipment, our
23 material is used in that area.

24 Q You have a problem with woodworking equipment
25 other than material handling equipment?

1 A Yes, I do.

2 Q And what is the problem?

3 A Our products are in conjunction with woodworking
4 equipment, it's worked along with, and our Grizzly
5 trademark is used in those areas as well.

6 Q So is it Pucel's position that the use of
7 Grizzly Industrial and/or Grizzly.com for any of the
8 products in the Grizzly Industrial catalog is a
9 problem for Pucel?

10 A I feel that Grizzly -- we do have a problem with
11 that, yes, using the trademark.

12 Q On saws, you have a problem with Grizzly
13 Industrial selling saws under the name Grizzly
14 Industrial?

15 A I do, yes.

16 Q And do you think that Grizzly Industrial's sale
17 of saws in its Grizzly Industrial catalog is likely to
18 cause confusion with Pucel or Pucel's products?

19 A Yes, I do.

20 - - - - -

21 (Exhibit Mlakar R-15 was
22 marked for identification.)

23 - - - - -

24 Q We have put in front of you Exhibit R-15 which
25 is document number 407. Could you please identify

1 that?

2 A This is by year showing the sales and also the -
3 not only sales, but the advertising in relation to
4 those sales.

5 Q Do you know how much Pucel spent on advertising
6 in 2002?

7 A No, I don't.

8 Q Would it have been more or less than the 87,000
9 spent in '01?

10 A It might have been a little more.

11 Q Probably less than 100,000?

12 A Yes.

13 Q And do you remember what the sales were for
14 2002?

15 A 4. - it was around 4.8.

16 Q So they were up over 2001?

17 A I think so. We're still working on those
18 numbers so I don't know specifically.

19 Q Looking at the advertising number of 87,111 for
20 '01, I want to run through the expenditures that make
21 up that 87,000. What would be the most expensive
22 piece of advertising, the catalog?

23 A The catalog and Thomas Register.

24 Q You print copies of the catalog every year?

25 A No. Based on the need, we go through about

- 1 15,000 a year. We print 50, 60,000.
- 2 Q At one time?
- 3 A Um-hmm.
- 4 Q So you don't necessarily print catalogs every
- 5 year?
- 6 A No, we don't.
- 7 Q For example, the - I think we have the current
- 8 one, which is 199, catalog number 199, which is
- 9 Exhibit R-4, is your current catalog.
- 10 A That's correct.
- 11 Q And do you remember when you printed this?
- 12 A '98 or '99.
- 13 Q So it's current today?
- 14 A Current right now until we empty - get rid of
- 15 all the catalogs. We have many more products we're
- 16 adding, but for now that's the catalog that's used.
- 17 Q Would you have printed 50 or 60,000 in '98 or
- 18 '99 when you redid the catalog and came out with 199?
- 19 A Would we have -
- 20 Q How many would you have printed - you said
- 21 sometimes you print 50 to 60,000 at one time.
- 22 A Right.
- 23 Q Would you have printed 50 to 60,000 in '98 or
- 24 '99?
- 25 A Depending on the cost and the availability of

1 the funds and how much we allocate toward it, it would
2 depend.

3 Q Do you know how much you allocated in 2001
4 toward the catalog?

5 A We didn't run any catalogs.

6 Q Did you print any catalogs in '01?

7 A No. We just printed fliers, updated fliers and
8 quick ship items. So we do have fliers that we send
9 to update.

10 Q Well, let's work on the 87,000 number for '01.
11 What is the biggest expense, the Thomas Register then?

12 A Um-hmm.

13 Q Do you know how much that is?

14 A Not offhand.

15 Q Approximately?

16 A 65,000.

17 Q And would you have printed fliers in '01?

18 A Um-hmm.

19 Q What type of fliers?

20 A We target certain customers that we might be
21 sending fliers to. I think there were a couple
22 brochures. We're in the process now -- that's why my
23 mind's flogged with fliers. We're in the process now
24 of developing them as well.

25 Q Did these go to existing customers?

1 A Yes. Or to anybody who is requesting an item
2 like that.

3 Q About how much would you have spent on fliers in
4 '01?

5 A I don't have that. I'm not sure.

6 Q And how many would you have printed?

7 A I think we did 2, 300 at a time, but we don't
8 have to print that many with the fax. I know a number
9 of them were faxed to customers.

10 Q What else goes into the 87,000? You probably
11 have in the range of 10 to 15,000 left after the
12 Thomas Register.

13 A We have -- and the Ameritech ads. We have moneys
14 allocated -- this is only actually the tip of the
15 iceberg that we put out, but we have -- we give moneys
16 toward companies to do publications and advertise our
17 Grizzly mark for us.

18 Q Is that included in the advertising
19 expenditures?

20 A I believe so, yes.

21 Q So if you're in -- is C&H a distributor?

22 A Yes, they are.

23 Q So if you appear in the C&H catalog, you would
24 give them some money to help pay for it?

25 A That one we don't. They haven't asked for it.

1 Q But some others you might?

2 A Some others do. We put moneys in toward that.

3 Q Does Pucel go to any trade shows?

4 A Indirectly we have. We go to trade shows
5 indirectly through our distributors. Like the one
6 that was in Cleveland, we give them our product and
7 then they put it on display and advertise for us.

8 Q Does Pucel ever have a booth at trade shows?

9 A We have, yes.

10 Q In 2001?

11 A No.

12 Q 2002?

13 A No.

14 Q 2003?

15 A No.

16 Q Prior to that?

17 A Prior to that.

18 Q When was the last time Pucel had a booth at a
19 trade show?

20 A When we had the Convention Center in Cleveland.
21 We were using it - it wasn't at the IX Center. I
22 believe that was six, seven years ago, maybe longer
23 than that.

24 Q So you don't typically go to trade shows?

25 A No.

1 Q That was special because it was in Cleveland
2 that year?

3 A It all depends. I would rather go through the
4 distributor since they already have the booth set up.
5 Actually, I went set up with a distributor and we had
6 it in St. Louis a few years ago. I was at a trade
7 show with them so I sent all the product down and I
8 actually manned the booth with them, but it wasn't
9 specifically my booth. I just helped pay for it.

10 Q What other promotion and advertising that Pucel
11 does would go into the advertising figure?

12 A Some of the magazines in the past we've done the
13 index cards that get sent out to customers.

14 Q Were Pucel products displayed at any trade shows
15 in 2002?

16 A Yes.

17 Q What trade shows?

18 A It was the one at the IX Center. It was the -
19 not sure of the name of the show.

20 Q What industry is represented by the show?

21 A Well, this one in particular was material
22 handling, casters. Material handling and industrial
23 equipment was where we put our equipment in the booth.
24 It was all types of equipment.

25 Q Material handling equipment?

1 A Some of it, yes.

2 Q What else?

3 A I didn't go this year. Typically they have
4 machinery. They have some service oriented -

5 MR. MITCHELL: Are you talking
6 about the show that's in November?

7 THE WITNESS: Yes.

8 MR. MITCHELL: That's the general
9 industrial show, I think.

10 THE WITNESS: Yes. It's Great
11 Lakes Industrial Show is what it's called.

12 MR. MITCHELL: Is that it, Great
13 Lakes Industrial?

14 THE WITNESS: Great Lakes
15 Industrial Show. It just dawned on me. I
16 went blank.

17 Q Does Pucel go to that every year through
18 distributors?

19 A It all depends.

20 Q Any other trade shows besides the Great Lakes
21 Industrial Show that Pucel's been to in the last few
22 years?

23 A I went to their industrial show in St. Louis.

24 Q When was that?

25 A That was three, four years ago.

-

1 Q Did you have a booth there?

2 A I helped. I paid for half of the booth and then
3 put the Grizzly Equipment in it.

4 Q Whose booth was it?

5 A It was one of our distributors.

6 Q They have other goods shown there besides
7 Pucel's, right?

8 A Yes.

9 Q Is Pucel's name on the booth?

10 A Yes.

11 Q Was the Pucel name on the booth in association
12 with a distributor?

13 A Yes. He had our names in each of our sections,
14 Then we had our catalogs on our equipment that we
15 passed out.

16 Q Now, what magazines does Pucel advertise in?

17 A There was a list that was given. I don't know
18 if you saw it. I sent that in.

19 Q I'll look for it. I remember something like
20 that.

21 MR. MITCHELL: Can we go off the
22 record for a second?

23 (Discussed had off the record.)

24 Q So that's Exhibit R-1 we're looking at now?

25 A That's correct.

1 Q It looks like I made up the list.

2 MR. MITCHELL: Yeah. That's what
3 I was thinking.

4 Q I see dates running back to 1983. Do you see
5 that second one from the top?

6 A Yes.

7 Q There's some other '80 dates throughout there
8 and I see some dates running up through 2001. So does
9 this list look fairly comprehensive of the
10 publications that you've placed advertisements in, at
11 least from '83 to 2001?

12 A I wouldn't limit it to this. It all depends
13 what you mean in publications because I feel the
14 thrust of us moving today is more the Internet and
15 things like that for advertising.

16 Q Excluding the Internet, printed publications.

17 A How about printed? That goes into another area
18 that I focus on even more would be some of the catalog
19 items of advertising that we send because there's -
20 the volume is in our printed - in the catalogs.

21 Q Those are distributor catalogs?

22 A Yes. They're pushing Grizzly Equipment, yes.

23 Q And the Internet -

24 A Internet.

25 Q - shows Grizzly Equipment by Pucel.

- 1 A Right. But what people do is take that
2 information off of ours and actually advertise it on
3 theirs. So there's a branching out even beyond this.
- 4 Q That's more recent.
- 5 A Over the past few years.
- 6 Q As far as printed publications go, is this list
7 fairly complete?
- 8 A For advertising?
- 9 Q In printed publications other than distributors'
10 catalogs.
- 11 A Yes.
- 12 Q Now, the top one is Ameritech Industrial
13 Purchasing Guides. Is that the Yellow Pages?
- 14 A That would be referring to the R-3 that we
15 looked at before.
- 16 Q Are you in the Yellow Pages every year?
- 17 A Yes.
- 18 Q In the Industrial Purchasing Guide section?
- 19 A Yes.
- 20 Q So your advertising is on the Internet today?
- 21 A Yes.
- 22 Q You are in distributors' catalogs?
- 23 A That's correct.
- 24 Q And you have your own catalog?
- 25 A Yes.

1 Q It does not look like you advertise much
2 anymore, other than the Yellow Pages, in any other
3 types of printed publications other than what we've
4 mentioned; is that right?

5 A That I'm not sure.

6 Q Are you aware of any trade journal, industry
7 publications that you're currently advertising in?

8 A No, I don't.

9 Q You're not aware of any?

10 A Not aware of any.

11 Q Do you think you are -- do you think Pucel is
12 placing any ads out now in any type of trade journals
13 or magazines?

14 A That I'm not sure.

15 Q Who would know?

16 A Tony would know.

17 Q Is Tony in charge of advertising?

18 A Typically he handles the renewals. We also take
19 into consideration our advertising as what we put on
20 our equipment as well. We consider that advertising.

21 Q Does that fit into the advertising budget?

22 A Not necessarily, but we take that into
23 consideration, just the printing of the labels.

24 Q Let's take a look at R-4 then, the catalog. If
25 you go two pages in, "Dependability and integrity

1 since 1949." The first paragraph refers to Pucel is
2 the industry leader for over 50 years.

3 A Yes.

4 Q And the industry you're talking about there is
5 the material handling and industrial equipment field.

6 A Yes.

7 Q What does Pucel mean by they're the industry
8 leader?

9 A Within our industry, the Grizzly product line
10 has been one of the common ones throughout the country
11 and we believe that many of the people look to us in a
12 lot of ways, not only for design, but also of what we
13 have in our product line.

14 Q Does Pucel have the most complete material
15 handling product line in the industry?

16 A I think one of the most complete, yes.

17 Q And the next paragraph refers to Pucel is the,
18 quote, "industry choice" for quality dependable
19 products.

20 A Yes.

21 Q And again, that refers to the material handling
22 industry?

23 A Material handling and industrial industry.

24 Q What's the industrial industry?

25 A Industrial equipment, material handling and

1 industrial equipment. So it's a little bit broader
2 than just material handling.

3 Q What type of equipment is industrial equipment?

4 A Industrial equipment would be some of the
5 materials used in the industry in conjunction with
6 another product.

7 Q Can you give me an example?

8 A It would be in connection with conveyors, for
9 example, is a good example where they have other
10 equipment next to it, but they incorporate our product
11 in the industry as a part of their machines around
12 them and conveyors.

13 Q Did the industry bestow this upon you, that you
14 were the industry choice or is that your own words?

15 A I believe that, as well as when you watch in the
16 industry you can see how people copy certain things
17 that are typically yours that the industry starts
18 using. So just little signs that you see other
19 companies start using and incorporating into their
20 product line.

21 Q Did you ever run any polls or market studies -

22 A No, we haven't.

23 Q - as to whether or not Pucel is the industry
24 choice? Your answer is you haven't?

25 A We have not.

1 Q Other than your personal opinion, do you have
2 any support for the statement that Pucel is the
3 industry choice?

4 A From our distributors who have our equipment and
5 sell Grizzly Equipment, they have said the quality and
6 workmanship of it.

7 Q Have they said that you're the industry choice?

8 A In other words.

9 Q As far as being the industry leader, that's in
10 terms of what elements, sales, innovative product
11 lines? What things fit under what are you the
12 industry leader in?

13 A Constantly growing product line based on the
14 needs of the people, based on the needs of the
15 customers. We're not just limited to just a small
16 group of items. We're constantly growing in our
17 product line.

18 Q Do you have a bigger product line than any other
19 material handling company?

20 A We have a substantial amount. I'm not sure how
21 it totally matches up. We're up there with them.

22 Q Up there with who?

23 A With some of the competitors in the field.

24 Q Who are they?

25 A That would be people -

- 1 Q The big ones.
- 2 A People like Lyons, Equipto.
- 3 Q How do you spell -
- 4 A L-Y-O-N-S.
- 5 Q - the second one?
- 6 A Equipto is E-Q-U-I-P-T-O. Hodge. Those are
- 7 some of them. Grizzly Industrial.
- 8 Q Gross sales wise, is Lyons, Equipto and Hodge
- 9 larger than Pucel?
- 10 A I know Lyons is larger. I don't know about the
- 11 others. They're pretty comparable in size, Equipto
- 12 and Hodge.
- 13 Q Do you know what the total material handling
- 14 market is?
- 15 A No, I don't.
- 16 Q Do you know what percentage you have of that
- 17 market?
- 18 A No.
- 19 Q If a company sells a dolly or hand cart, are
- 20 they a competitor of Pucel?
- 21 A If they sell it?
- 22 Q If a company sells a dolly or hand cart, are
- 23 they competitors of Pucel?
- 24 A Not necessarily.
- 25 Q How do you determine who's a competitor?
-

1 A In selling those goods?

2 Q How do you determine who's a competitor of
3 Pucel?

4 A Manufacturing company that sells and distributes
5 our products in the industry.

6 Q What do you mean "in the industry"?

7 A In the industry, in the different channels in
8 which we sell to.

9 Q What channels do you sell to?

10 A We sell through channels of distributors, we
11 sell through the Internet end users.

12 Q So if I started selling - if I formed a company
13 and started selling dollies over the Internet, would
14 you consider me to be a competitor of yours?

15 A Only if you were using the same marks as ours,
16 then you would be.

17 Q Does Lyons use the same marks as Pucel?

18 A No, they don't.

19 Q Yet you said they were a competitor. I'm trying
20 to determine how you decide whether or not someone is
21 a competitor.

22 A Competitor is one who is taking sales away from
23 us. That would be a competitor. And not buying from
24 us.

25 Q Let me pose it this way for you. You say a

1 competitor takes sales away from you. Would you agree
2 that it might be a more apt description of a
3 competitor to say that someone who is competing with
4 you for the same sales?

5 A Could you repeat that?

6 MR. SCHMIDT: Can you read that
7 back?

8 (Record read.)

9 A That could be an aspect of it.

10 Q What other aspects are there to competitors,
11 that they would then fit in the category of being a
12 competitor?

13 A Well, a competitor is one who takes sales away
14 from us. A competitor would be, in our eyes, someone
15 who would be -

16 Q Let's back up for one second. Do all of your
17 competitors take sales away from you?

18 A Potentially it could.

19 Q Okay. Go ahead.

20 A Potentially.

21 Q And what else makes up a competitor, they take
22 sales away from you?

23 A A competitor would be someone who actually takes
24 - manufactures different goods than what we have,
25 meaning that they use their own facility to

1 manufacture, that would be a competitor.

2 Q To manufacture the same goods that you are?

3 A Same goods and other ones.

4 Q What do you mean "other ones"?

5 A It could be, because some people might be
6 manufacturing items that we don't have in our book, in
7 our catalog.

8 Q But they still might be a competitor?

9 A Potentially, yes.

10 Q Is Home Depot a competitor?

11 A No.

12 Q Why not?

13 A Because they don't sell these products that we
14 have.

15 Q Don't they sell hand trucks and dollies?

16 A I'm sure they do.

17 Q But you don't consider them to be a competitor?

18 A They're not manufacturing it so that's one
19 aspect of it, manufacturing it.

20 Q So only the manufacturers of the products of the
21 type in your catalog are competitors?

22 A Not necessarily.

23 Q I don't understand. Could you explain that?

24 A Well, for example, in the case in why we're
25 here, they're using the same mark with the same goods

1 and forming the confusion in the same formation of our
2 trade. We go after the same customers, so that's a
3 competitor. Taking sales from us. That's the
4 confusion of it all. We have the same mark of
5 Grizzly, the wording. We have the same bear. It's
6 the same goods and distributed, I believe, through the
7 same means through which we distribute from.

8 Q And that answer is how you define what a
9 competitor is?

10 A No. That's one aspect of a competitor.

11 Q You said you send out about 15,000 catalogs a
12 year.

13 A Yes.

14 Q How many of those are to existing customers?

15 A Actually, most of those are just from people who
16 are based off the catalog request form.

17 Q Do you know what prompts companies to request a
18 catalog?

19 A Really the Internet has actually prompted a lot
20 of that. We get a lot of individuals requesting
21 catalogs because they see us on the web site and they
22 want to have something in their hands with the
23 catalog. So it's not necessarily companies that are
24 after the Grizzly Equipment of ours.

25 Q So if you - one way of bringing in a new

1 customer would be that they go on your web site -

2 A Potentially.

3 Q - and request a catalog and you send them the
4 catalog.

5 A Yes. That's one way.

6 Q And then do they call you to place an order? Do
7 they call Pucel?

8 A They can, yes.

9 Q And who do they talk to when they call Pucel to
10 place an order?

11 A They call the people in the office that are
12 working.

13 Q Is there someone in particular that takes in new
14 orders?

15 A Not necessarily, no. Any of the guys will take
16 the orders.

17 Q Would it be you, your father?

18 A Not necessarily.

19 Q Who are the guys that would take the orders,
20 what's their job?

21 A We have one guy who typically does much of the
22 customer service and he'll do the processing of the
23 orders and then we have another guy that will answer
24 questions on a more technical level, if they have
25 technical questions, so we have them on hand as well.

1 Q I think you had just under five million in sales
2 in 2001.

3 A Um-hmm.

4 Q About 4.8, I guess, in 2002. What percentage of
5 those sales are with existing customers?

6 A I don't know.

7 Q 90 percent?

8 A I'm not sure.

9 Q Do you have any idea how much new business you
10 pick up in terms of new customers every year?

11 A Hundreds.

12 Q Pucel picks up hundreds of new customers every
13 year?

14 A Yes.

15 Q And are these customers going directly to Pucel?

16 A Some are.

17 Q What percentage would go directly to Pucel?

18 A That I'm not sure.

19 Q Do most of the new customers come through your
20 distributors?

21 A Some of them.

22 Q Where would most of them come through?

23 A We have some of them that — a majority of them
24 are the ones on the catalogs. We have people coming
25 on board as a specialized mail order and they have

1 thousands of actual people that are part of that
2 program that sign up on a regular basis. That's one
3 avenue. Another avenue are new customers, people on
4 the web site that are placing orders and it gets drop
5 shipped all over the country.

6 Q Do you take orders on the Pucel web site?

7 A There's an order online. RFQ section and an
8 order online on our web site.

9 Q Is that with Pucel or with Thomas Register?

10 A That's in connection. Our web site will link
11 into Thomas Register. They host our order online.

12 Q So you're not doing it yourself?

13 A Well, it is us, we do all the work with it in
14 designing it, but they're hosting it and our web site
15 links directly into it.

16 Q Who takes the orders, the Thomas Register
17 people?

18 A No. It comes right to us. We just access the
19 file and it comes, we download. They don't send it to
20 us or anything. We actually go into our site and
21 actually download the information if it's an RFQ or an
22 order online.

23 Q Do you know what percent of your business is
24 done that way now, on the on-line order?

25 A No, I don't. It's grown over the past few

1 years.

2 Q Would it be less than 10 percent?

3 A I'm not sure.

4 Q Would the bulk of Pucel's business come through
5 companies ordering from major distributors?

6 A I'd say a lot of it goes through distributors
7 who then go into the end users themselves because
8 they're the ones who are actually hitting the streets
9 and getting everybody they can within their region.

10 Q How many different companies distribute Pucel
11 products?

12 A Thousands.

13 Q You have thousands of distributors?

14 A Um-hmm.

15 Q Companies like Global Industrial and C&H?

16 A Well, we have other distributors that actually
17 distribute our product line. For example, one company
18 might have - it has a few hundred partners within that
19 one company. So you're going to see one name as a
20 distributor, however, that's their corporate office,
21 but they have many partners who distribute the
22 product.

23 Q So how does Granger deal with Pucel when they
24 want to buy something?

25 A They just call us up and have a request for

1 quote.

2 Q They call you directly?

3 A Granger does, yes.

4 Q How many of your -- I assume they're one of
5 you're larger customers.

6 A They are one of our larger.

7 Q If you say in round numbers that your business
8 is about five million a year, are there ten or less
9 customers that make up about 90 percent of that?

10 A Are there -- could you re --

11 Q Ten or less customers that make up about 90
12 percent of that five million.

13 A No, not at all. No.

14 Q If you take five or ten of your largest
15 customers, what percentage of that would they make up?

16 MR. MITCHELL: Do you want the
17 answer for five or first for five and then
18 for ten or --

19 Q First for five.

20 A First for five. There would be probably 25, 30
21 percent, 25. Something like that.

22 Q And your ten largest customers would be what
23 percent --

24 A That I don't know.

25 Q -- of the total?

1 MR. MITCHELL: If you don't know -
2 A It's a small percentage.
3 MR. MITCHELL: - that's your
4 answer.
5 A Yeah. I don't know.
6 Q It's in excess of 25 percent?
7 A For -
8 Q Did you just say for five customers it was
9 roughly 25 percent?
10 A Well, it drops way off percentage wise. So it
11 might be one to two percent because there's so many of
12 them, it makes up one, two percent.
13 Q If you took your top ten customers, would gross
14 sales to those customers be in excess of a million
15 dollars?
16 A Yes.
17 Q Your ten largest customers?
18 A Yes.
19 Q Would it be in excess of two million?
20 A That I don't know.
21 Q Somewhere between one and two million?
22 A It's less than two million.
23 Q Now, do you deal directly with those ten
24 customers?
25 A Do I personally?

1 Q No. Someone from Pucel. Do they go through
2 distributors or do they work directly with Pucel?

3 A They work directly through Pucel when they buy
4 Grizzly Equipment.

5 Q Now, how does Pucel typically employ your
6 customers?

7 A We typically will periodically send out
8 literature. We will do cold calls periodically trying
9 to gain customers.

10 Q Who do you send out literature to?

11 A It all depends. Like we've been trying to get
12 more customers in terms of like the shipping, in that
13 industry, to we'll move into different targeted areas
14 to try to get more business. We'll call on certain
15 people that are potential people that would buy the
16 equipment.

17 Q Do you sell exclusively to companies?

18 A I don't understand that question.

19 Q Does Pucel have any individuals that are
20 customers?

21 A Yes, we do.

22 Q And how many individuals?

23 A I don't know that.

24 Q What do you sell to individuals?

25 A We sell cabinets, workbenches, carts, platform

1 trucks, dollies. Anything that they would need.

2 Q What percent of the five million would you say
3 is purchased by individual customers?

4 A That I don't know. I don't have that
5 information.

6 Q Would you say less than five percent?

7 A I don't know.

8 Q Who would know?

9 A I'm not sure.

10 Q How do you target individuals in your
11 advertising?

12 A Basically through the Internet is the biggest
13 source to target individuals.

14 Q Other than the Internet, how do you target
15 individuals?

16 A We have what we call a scratch and dent through
17 some of our auctions on some of our returns and we get
18 a large number of people that come to that, so they're
19 continual customers after that. They might have a
20 small machine shop or they might use it for their own
21 personal use and they acquire it through that auction
22 and then they continue and they keep coming back. So
23 there's a number of customers that we've acquired over
24 the years that will just keep coming back for
25 equipment.

- 1 Q And is this like a garage sale?
- 2 A It's a way - some things that are maybe
- 3 scratched, you know.
- 4 Q Where does this take place?
- 5 A At our facility.
- 6 Q So they come to Pucel?
- 7 A Um-hmm.
- 8 Q And there's an auction and they buy a scratched
- 9 desk or cabinet?
- 10 A Yes.
- 11 Q Could be a housewife as far as you know?
- 12 A It could be. Sure.
- 13 Q How do you know they're individuals versus
- 14 company representatives?
- 15 A Well, when you talk to them and mingle with
- 16 them, you know they're taking it home or they will
- 17 have to come back.
- 18 Q So you mingle with them during the auction?
- 19 A Periodically.
- 20 Q How often do you do that?
- 21 A Once a year, once every other year we try and do
- 22 that. Lately it's been a little bit - we've had more
- 23 people coming in so we haven't had to have them. We
- 24 get rid of some of the stuff.
- 25 Q How does the Pucel web site target individuals?

1 A Anybody all over the country can actually go
2 online, as you know, and it could be when they type in
3 our equipment, ours comes up.

4 Q I understand that, but how do you on your web
5 site target individuals?

6 A By the products that we have.

7 Q Are they meant for individual use?

8 A Absolutely. Yes. We also have -- we have a
9 company that actually distributes directly to the
10 homes and they sell in children's bedrooms our
11 equipment, they go directly into people's garages some
12 of our equipment.

13 Q What company is that?

14 MR. MITCHELL: Well, we'll object
15 because identity of a customer.

16 MR. SCHMIDT: Is the company part
17 of Pucel or is it a customer?

18 MR. MITCHELL: It's a customer of
19 Pucel.

20 A That sells directly into the homes.

21 MR. MITCHELL: And they resell to
22 individuals in homes for use in the home.

23 - - - - -

24 (Exhibit Mlakar R-16 was
25 marked for identification.)

1 - - - - -

2 (Recess had.)

3 Q Here's your original for safekeeping as
4 promised.

5 A Goes in my special file.

6 Q R-16 is a 1967 catalog that doesn't have any
7 Bates numbers because we just got that today. So
8 there's no numbers, which is fine with me right now,
9 so this is a 1967. That should be enough for all of
10 us.

11 A That's fine.

12 MR. SCHMIDT: I guess we're going
13 to have all these with no numbers.

14 MR. MITCHELL: Right. You do have
15 the numbered pages that correspond to the
16 tabbed sections, but I don't know what
17 number they are without looking it up.

18 Q If you look at the back page - actually, a
19 couple - let's start with this. Looking at the back
20 page of Exhibit R-16, is this something you put on
21 when you mail it on who to route to?

22 A Pardon me?

23 Q When this catalog was mailed, there's a number
24 of different types of areas listed on the back that
25 the catalog may go to. Are you on the last page?

- 1 A Yes, I am.
- 2 Q Do you see where it says "Please route to" under
3 Pucel?
- 4 A Yes.
- 5 Q Are these the type of companies or buyers that
6 you would traditionally route your catalogs to?
7 General foreman, is that someone that you would send
8 them to?
- 9 A We could, but not solely to these people.
- 10 Q But would these be the main people who Pucel
11 would sell to?
- 12 A Not necessarily. This was done in '67 which was
13 a little bit before my time with the company, so what
14 the intent is, it was limited to those people, but
15 even in -
- 16 Q Is it important for you today to send catalogs
17 to general foremen of companies?
- 18 A I prefer not to.
- 19 Q How about metal and material handling engineers?
- 20 A No, I wouldn't.
- 21 Q Maintenance department?
- 22 A Not necessarily.
- 23 Q Production?
- 24 A No.
- 25 Q Product design?

1 A No.

2 Q Equipment buyers?

3 A Not necessarily.

4 Q What's your focus today with the catalog?

5 A I like actual names. I prefer that method. I

6 don't like this method. So I -

7 Q I'm not asking about the method on identifying a

8 general foreman, but the names, what type of positions

9 do the people hold that you're focusing sending the

10 catalogs to? I'm asking are they equipment buyers of

11 companies?

12 A They could be. This is a little bit limiting.

13 Q Can you list who you like to send catalogs to?

14 A You might have people, but I prefer names in

15 themselves.

16 Q I understand the names. These people hold jobs.

17 A Right.

18 Q What jobs do they hold?

19 A I don't necessarily know what jobs they have

20 specifically. Might be an engineer, it could be a

21 foreman. It could be - I mean, it could be those

22 items, but not necessarily. This sort of puts people

23 into just a general category, into a box, whereas I

24 think today it's more open ended than something like

25 this.

1 Q Who typically places orders from your larger
2 customers?

3 A It varies. We have a broad range of customers
4 anywhere from customers that have things in their home
5 to people who have a smaller shop that just need a
6 cart or a workbench in their facility. Although some
7 of these might work, because even in a small place,
8 many times they - if you notice on any type of
9 literature that's sent out or advertising, in order to
10 get a book, you have to say what you are. Well, you
11 could be anything you want. You could have a
12 three-person shop and you're the manager, you're the
13 product manager. You could have - you know what I'm
14 saying? It doesn't matter. These catalogs would be
15 distributed to anyone.

16 Q But they're typically plants in industrial
17 settings?

18 A Back then possibly.

19 Q Today for the most part isn't that the bulk of
20 your sales are to companies?

21 A We sell to the company and the company has their
22 end user. Their end user could be anyone in their
23 area. It could be someone off the street. It could
24 be - I mean, they're going to sell to whoever they
25 want because some of the actual distributors have

1 retail stores where they have hand trucks of ours,
2 carts. I mean they actually show them in their
3 showroom so it could be anybody.

4 Q So your products are shown in retail showrooms?

5 A Some of them are, yes.

6 Q Which showrooms?

7 A I don't know all of them.

8 Q Do you know any of them?

9 A Yes.

10 Q Can you name some?

11 A Yes. Right down the street from us there's a
12 person who sells material handling and casters. They
13 have ours in the front of their office, their showroom
14 and part of that is our equipment.

15 Q Any place outside of Cleveland?

16 A Yes. On the West Coast there's a company that
17 actually has our equipment in their window as well and
18 sells it on a regular basis.

19 Q And what type of - is this a retail
20 establishment -

21 A Yes.

22 Q - or warehouse?

23 What is the one in California?

24 A What is it called?

25 Q Yeah. I mean, you talk about a showroom or a

1 store.

2 A It's just - their company is called Black, Inc.

3 I don't think it makes -

4 MR. MITCHELL: That's fine.

5 A It's called Black, Inc. and they have a store

6 and actually is expanding into another retail store

7 where he has our stuff viewed in the storeroom so

8 those are people off the street.

9 Q And he sells material handling equipment?

10 A Not necessarily. He does and he doesn't. He

11 sells our industrial equipment, but he's using it for

12 a different function. That's what I was saying that

13 we have a broad range of customers. They're actually

14 putting our units and using them on - some of his

15 customers put their televisions on them because they

16 want that industrial look.

17 Those other two companies I was referring to

18 that are selling to the public, that's just a big

19 thing in New York now. In fact, a lot of our

20 equipment is even in showrooms in New York City. Very

21 popular.

22 Q When you say "showrooms," are these street level

23 stores?

24 A Yes.

25 Q And how are your products getting into those

1 stores?

2 A The Internet more and more. We have - it seems
3 like in the last few years there's been a great desire
4 for the industrial equipment look so we've been
5 getting just - that's where a lot of people are coming
6 on to the web site.

7 Q How do you get into these stores? Is that
8 through efforts of your distributors or people at
9 Pucel?

10 A Actually, people - both I would say. Some of
11 them see us on the web site and they say I'm
12 interested in this and others might be a distributor,
13 could be.

14 Q Now, for New York stores that show your product,
15 or California stores, do you ship to them, Pucel, or
16 does a distributor ship to them?

17 A We ship directly to them.

18 Q And do you ship multiple units or just one of
19 each that they want and then when someone wants it,
20 they call you for an order?

21 A No. There's actually been a demand so they
22 order multiple units.

23 Q So somebody might have ten cabinets in stock at
24 a retail location?

25 A Potentially, yeah.

1 MR. MITCHELL: Same thing is true
2 with some of your distributors as well,
3 right?

4 A Yeah. We have some stocking distributors as
5 well that carry the goods and then send - as they sell
6 them, then they just release them and then they order
7 more.

8 MR. MITCHELL: And they display as
9 well, right?

10 THE WITNESS: Yes.

11 Q Do they have retail showrooms?

12 A I believe, yes.

13 Q Who is an example of a distributor?

14 A We have one distributor in particular that has
15 warehouses in - I believe they have their showrooms,
16 one's here in Ohio, New Jersey, Chicago, California.
17 There's five and they just opened up a sixth one.
18 Georgia is the fifth one.

19 MR. SCHMIDT: I think it's part
20 of the production and interrogatories, but
21 I don't remember any of this being in
22 there.

23 MR. MITCHELL: Any of what?

24 MR. SCHMIDT: This type of
25 information being sold at retail. For

1 example, in New York, none of that was
2 responded to. So I think you guys have to
3 look at that, bring that up to date a
4 little bit if you have information on all
5 of these other uses because, I mean, all we
6 have in front of us is what you've given
7 me.

8 MR. MITCHELL: I would agree with
9 that. I think that some of this is new
10 information.

11 MR. SCHMIDT: I mean, I've read
12 everything in here this weekend and this is
13 new and it doesn't sound like it just
14 happened yesterday.

15 Q Right? It's been going on a couple of years?

16 A Yes. But it -- what happens is -- that's why we
17 kept saying how broad everything is, that it just
18 keeps expanding into more and more areas.

19 MR. MITCHELL: It's a very
20 expansive distribution and sales.

21 MR. SCHMIDT: Well, I would say
22 that you're really extremely short then on
23 your discovery because there is a whole
24 other area that I never heard about and I'm
25 sitting here and deposing him and I don't

1 have any of that information in front of
2 me. It hasn't been answered, no documents
3 have been produced. There's been no
4 indication that any of your products are
5 displayed or shown at retail to my
6 knowledge of what's in the discovery to
7 date. So you need to bring me up to date
8 on that.

9 MR. MITCHELL: Yeah. We'll take a
10 look back at that and see if there are any
11 documents, but I think that one of the
12 interrogatories alluded to the breadth of
13 the distribution and sales through, among
14 other things, the Internet and through the
15 distributors' links to the Pucel site on
16 the Internet.

17 Do you want to stop for lunch now?

18 MR. SCHMIDT: Yeah, before it gets
19 too late.

20 Will you stipulate that anything that
21 you've produced I can use rather than
22 having me mark it from here and your
23 production documents that you won't object
24 to it?

25 MR. MITCHELL: You mean because

1 they aren't marked, because they don't have
2 a Bates stamp number on it, is that what
3 you mean?

4 MR. SCHMIDT: No. Because they
5 aren't identified in a deposition.

6 MR. MITCHELL: I don't understand.
7 What do you mean they're not identified?

8 MR. SCHMIDT: I don't want to sit
9 - I mean, sometimes people typically go
10 through and mark every document so that
11 they can use it later on in a brief and
12 argument or whatever.

13 MR. MITCHELL: Sure.

14 MR. SCHMIDT: Would you stipulate
15 that anything that you've produced you
16 won't object to?

17 MR. MITCHELL: As far as?

18 MR. SCHMIDT: My use of.

19 MR. MITCHELL: But you don't
20 intend to mark it, is that what you're
21 saying?

22 MR. SCHMIDT: Right.

23 MR. MITCHELL: Let me think about
24 that because it might be awfully confusing
25 later.

1 MR. SCHMIDT: Because otherwise
2 I'm going to go through all these things
3 and get it marked.

4 MR. MITCHELL: Let me think about
5 it. I'm inclined not to so stipulate
6 because I won't be able to make any sense
7 out of it later. That's my only concern.

8 MR. SCHMIDT: That's all right.

9 - - - - -

10 (Lunch recess had at 12:45 p.m.)

11 - - - - -

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Tuesday, March 18, 2003

2 2:10 p.m.

3 - - - - -

4 (Anthony Mlakar present.)

5 - - - - -

6 CONTINUED EXAMINATION OF ROBERT MLAKAR

7 BY MR. SCHMIDT:

8 Q So, Mr. Mlakar, I think you said that you're
9 somewhat involved in advertising and marketing, but
10 that your father is principally responsible for the
11 advertising.

12 A Yes. He signs the contracts.

13 Q Is there anyone at the company other than you
14 two that determine the type of advertising and the
15 goals of your advertising other than you two?

16 A No. The two of us.

17 Q Do you work with an advertising agency?

18 A Could you define that what an advertising agency
19 is? What do you -

20 Q An agency that places advertisements.

21 A No, not necessarily.

22 Q Do you develop your own advertisements?

23 A Yes. But we have other people do the - you
24 know, where they give the ideas. That's what I was
25 asking.

1 Q Do you contract with somebody outside to help
2 prepare your ads after you give them ideas?

3 A No.

4 Q You work that all out in-house?

5 A In-house, yes.

6 Q And then you go directly to the media that
7 you're using, for example, you'll contact Thomas
8 Register directly?

9 A I have people doing the computer work, the
10 layout. I work with a couple people, you know. The
11 fliers I was telling you about.

12 Q In-house?

13 A I do them in-house and then we have the other -
14 someone else to do the computer work. That's correct.

15 Q Outside?

16 A Yes.

17 Q You go to an outside -

18 A Yes.

19 Q - graphics design firm?

20 A Yes.

21 Q Now, you don't do any TV or radio advertising,
22 correct?

23 A Not ourselves directly, no.

24 Q When you say not yourself, are you referring to
25 someone like Global Industrial or C&H may run a

1 television or radio ad?

2 A We don't have ads, but our stuff has been on
3 television.

4 Q How so?

5 A We have one of our customers who puts them on
6 their show, some of our pieces.

7 Q Can you explain that? It's been on TV, it can't
8 be too much of a secret.

9 A Yeah. She incorporates our product line into
10 hers that she sells so she'll do a feature television
11 show on what she's doing and she'll have our products
12 in front of her and on television she'll talk about
13 them.

14 Q What TV show?

15 A Martha Stewart.

16 Q What products of yours will she show on the
17 show?

18 A She'll do the desk, the stands.

19 Q Anything else?

20 A I'm not sure if she put on her show directly, it
21 was a drawer unit workbench.

22 Q And what's the frequency that your products have
23 been on the Martha Stewart show?

24 A Directly talking about ours, I would say three
25 to four times.

1 Q And when did this occur?

2 A In the last few years.

3 Q In 2003?

4 A I'd say it started in '99, 2000.

5 Q Did it go into 2001?

6 A Yes.

7 Q Do you have videotape of the show?

8 A Yes.

9 MR. SCHMIDT: Can you produce that
10 as the usage of the name on TV media?

11 MR. MITCHELL: I don't see why
12 not.

13 Q Do you have a problem making me a copy of that
14 and sending it out?

15 A No.

16 Q I'd like to show that to the client. Is the
17 name Pucel mentioned by Martha Stewart?

18 A Now that you mention it, I was trying to figure
19 that out.

20 Q You can't remember?

21 A That I can't remember.

22 Q What do you remember that was said about your
23 products in terms of who the manufacturer is, the name
24 of the product? Do you remember anything?

25 A Yeah. She talks - sometimes she talks about

1 that she found this great company, she was looking for
2 years, that can produce this and it's a family-owned
3 business and she kind of gives information like that
4 with regard to it.

5 Q Did you get any calls off of that show, any of
6 those shows? There was a number of times they were on
7 so did you receive any calls as a result of being on
8 the TV?

9 A I really don't know that.

10 Q Tony might?

11 A Pardon me?

12 Q Tony might know? Your father might know?

13 A Not necessarily.

14 Q Is Pucel attending any trade shows in 2003?

15 A I'm not sure yet.

16 Q Do you know if Pucel will be shown at trade
17 shows or part of someone else's booth at trade shows
18 in 2003?

19 A I imagine we will be, yes.

20 Q What shows are you looking at for 2003?

21 A That one industrial, the one in St. Louis
22 typically will probably have our products in there.
23 It's based on requests as the year evolves. If we're
24 willing to ship the products out there, have them man
25 the booth.

1 MR. MLAKAR: And Cleveland.

2 A We had that one in November. That would be -
3 the next one would be in November.

4 Q There's a Cleveland show you'll probably attend
5 in 2003?

6 A That Great Lakes Industrial Show.

7 Q That's annual?

8 A Yes.

9 Q Who attends that show? Do you know the class of
10 customers?

11 A Just by me being there and going through it,
12 it's all different people. It's pretty popular in
13 Cleveland. A lot of people go from businesses for
14 their own use. They're not necessarily connected with
15 a company, but they will go for their own self. Some
16 are going - are sent from their company.

17 Q I asked you earlier and I thought you said that
18 you didn't have any idea what percentage to the total
19 your sales are to individuals. Is that right, you
20 didn't know?

21 A That's correct.

22 Q Does the company keep such records?

23 A No, we don't.

24 Q Individuals aren't the focus of your business
25 though, are they?

1 A It's a part of our business.

2 Q A small part, right?

3 A I can't say that because you have to remember
4 the distributors sell to the individual people as
5 well.

6 Q Customers like Granger that are the heart of
7 your business in terms of generating sales -

8 A They're a larger one, but it's the extra 2,
9 3,000 that are the smaller percentage that actually
10 makes the bulk of it so you have -

11 Q Are those individuals or smaller companies?

12 A Not necessarily smaller companies. It's just
13 they comprise the bulk of the business.

14 MR. MITCHELL: You might want to
15 explain that better to him.

16 A Well, you have that 25 percent I was talking to
17 you about of being 25 percent of the volume, but then
18 you have many people that are only one through three
19 percent of the total whole of the amount so it doesn't
20 really mean that they're small or large on that
21 percentage.

22 Q Do you ship to all 50 states?

23 A Yes, we do.

24 Q Is there a greater concentration of shipments to
25 customers in any part of the country than any other?

1 A I'm not sure.

2 Q Now, the Thomas Register takes up two-thirds to
3 three-quarters of your advertising budget. What's the
4 purpose of using the Thomas Register?

5 A Thomas Register handles all the different
6 mediums for us to advertise in, which is appealing.
7 It advertises in book form. It advertises in CD form.
8 It advertises in web form. So it handles all the
9 different mediums in which we would like to advertise
10 in and they handle that.

11 Q Who uses the Thomas Register?

12 A Well, actually, anybody can use the Thomas
13 Register.

14 Q I'm sure of that, but there's probably a
15 customer base that they're geared toward.

16 A They're geared toward - it's hard to say because
17 right now what they do is they have - they use Google
18 and some of the other search engines that are actually
19 plugging right into their site so the amount of hits
20 into our catalog is pretty phenomenal. So it could be
21 anybody who types in some of the keywords of
22 workbenches. They're targeting a more broader range
23 of people, all people. It could be business, it could
24 be the private person.

25 Q Isn't Thomas Register an industrial guide of

1 suppliers?

2 A Many of them are the ones who handle their
3 books, industrial supplies, people who will be using
4 industrial equipment order the Thomas Register books,
5 but they handle all different services. They're not
6 limited to one particular area.

7 Q How long have you been using, you being Pucel,
8 been using the Thomas Register?

9 A As advertising?

10 Q Yes.

11 A I think -

12 MR. MLAKAR: I'd be better able to
13 answer that.

14 A Yeah. As long as I've known, at least over 25
15 years for sure.

16 Q You've used it to advertise in?

17 A Yes.

18 Q And does Pucel also use the Thomas Register as a
19 purchasing guide?

20 A Occasionally.

21 Q Pucel has a web site that's Pucel-Grizzly.com.

22 A That's correct.

23 Q And was there a different domain name prior to
24 Pucel-Grizzly.com?

25 A No. We have Grizzly/Pucel.com as well. Those

1 are the two we have.

2 Q Did you ever have just Pucel.com?

3 A No, we did not.

4 Q So your first and only domain names were

5 Pucel-Grizzly and Grizzly/Pucel?

6 A That's correct.

7 Q Now, does your web site stand on its own or is

8 it only tied in with the Thomas Register?

9 A I have it linked right into Thomas Register

10 because of the e-commerce and everything on that web

11 site is everything in our catalog.

12 Q Everything on what web site?

13 A Everything in our web site.

14 Q On the Pucel web site?

15 A Yes.

16 Q Is in your catalog?

17 A That's correct.

18 Q Everything in the catalog is on the web site?

19 A That's correct.

20 Q And the 65,000 that you spend in advertising

21 with the Thomas Register, does that relate to the web

22 site link?

23 A Yes.

24 Q It's a fee they charge for Pucel to be listed in

25 the Thomas Register?

1 A They do. They charge. Yes.

2 MR. MLAKAR: It's not just the web
3 site.

4 A Yeah. It's the whole e-commerce package.

5 Q You mentioned there's CDs and so forth. To sign
6 up for the Thomas Register - it's roughly 65,000 a
7 year for Pucel to sign up with the Thomas Register.

8 A In the different mediums.

9 Q In the different media?

10 A Um-hmm. And that varies. It doesn't have to be
11 that number, just doesn't have to be that number now.

12 Q You mentioned that you have a lot of different
13 customers, but who are Pucel's primary customers?

14 MR. MITCHELL: We don't really
15 want our customers disclosed.

16 Q Without the names, just tell me the type of
17 businesses that they're involved in.

18 MR. MITCHELL: Okay. That's fair.

19 A We have people that, as I mentioned before,
20 plastic working could be, electronic working, could be
21 woodworking, metal working.

22 Q It could be, but do you have a large woodworking
23 client?

24 A We don't specifically see sometimes all of the
25 end users who would be using it, but we know we have

1 clients that actually have shops and metal working,
2 woodworking that actually use that equipment.

3 MR. SCHMIDT: I think it would be
4 relevant to disclose those if there are any
5 in business.

6 MR. MITCHELL: You got a
7 woodworker right next door, right?

8 THE WITNESS: Yeah. Right next
9 door to me, same thing.

10 Q Is that a — and I tried to limit this first by
11 saying who are your primary customers, not just that
12 there happens to be a woodworker next door. If your
13 business is going to make it or break it, what are the
14 types of customers that are going to keep you going —

15 A All of those.

16 Q — without naming the names?

17 A Without the names of the companies?

18 Q Without naming specific customer names. I
19 assume you have some key accounts. I'm trying to get
20 at the type of business that your key accounts are
21 engaged in, not that they could be this or could be
22 that. But in reality you have, I assume, key
23 accounts; is that right?

24 MR. MITCHELL: Could I interject
25 something?

1 What I think he's asking is that you
2 sell to — in many different ways, but you
3 sell to distributors, you sell to
4 individuals on the Internet and I think
5 what his question is what are the business
6 of those distributors, who do they in turn
7 supply the equipment to. I think that's
8 what your — I think that's your question.

9 MR. SCHMIDT: That's part of it.

10 MR. MITCHELL: As far as classes
11 of customers.

12 MR. SCHMIDT: That's part of it.

13 Q I think you have probably a number of accounts
14 that you deal directly with, long-term customers.
15 Would that be right?

16 A Yes.

17 Q Somebody like Granger, that's one name we've
18 mentioned. Granger uses your products in what type of
19 businesses, what business are they in?

20 A They sell industrial equipment and they're not —
21 they sell to metal working.

22 Q Does Granger use your equipment or does Granger
23 resell it?

24 A They resell it.

25 Q They're an equipment supplier?

1 A Material handling, industrial equipment,
2 motors. All sorts of areas.

3 Q Do most of the people that you sell to end up
4 reselling your product?

5 A Not necessarily.

6 Q So it's a mix, some use it and some resell it?

7 A That's correct.

8 Q Of course, everything like C&H and Global
9 Industrial, that's all reselling?

10 A That's correct.

11 Q Because they don't use it, they're regular
12 distributors?

13 A That's correct.

14 Q Are your biggest accounts in terms of volume and
15 gross dollar sales companies that resell?

16 A Yes.

17 Q How involved is Pucel in soliciting customers
18 directly?

19 A How do we do that?

20 Q Do you do that?

21 A We do that through the Internet.

22 Q Other than the Internet?

23 A Just calls.

24 Q Is there a pattern set up for making such calls?

25 I think you mentioned you don't have any in-house

1 salesmen.

2 A That's correct.

3 Q So how does Pucel go about when they're not
4 using distributors, how do they go about directly
5 marketing products?

6 A Individuals?

7 Q No. How does Pucel go out to anybody? Do you
8 make sales calls? Do you or your father make sales
9 calls?

10 A Occasionally we do.

11 Q What's occasionally?

12 A I'll go and customers - some of our customers
13 request me to go into some of the places either for a
14 presentation or for a specific project.

15 Q That's an existing customer?

16 A Yeah. We've also done things with sales leads.
17 We've had - you can subscribe to it where you have
18 sales leads where you get an actual contact name.

19 Q Do you make cold calls?

20 A Off of those sales leads, if we feel it would be
21 a good enough lead, we would follow up with a call.

22 Q Is there an average size of order that you're
23 aware of for Pucel's products in terms of hundreds of
24 thousands of dollars?

25 A I'd probably say about 150, 160.

- 1 Q And what would some of the larger orders be -
- 2 A We have -
- 3 Q - on an annual basis, say?
- 4 A Of what one individual order would be, large?
- 5 Q Yeah.
- 6 A Like 3,000.
- 7 Q Are most of Pucel's customers fairly
- 8 sophisticated as to what type of product they're
- 9 looking for and its purposes.
- 10 A I think it all depends on the company as to who
- 11 they have. I'm not sure.
- 12 Q Well, most of them, if not all of them, have
- 13 some level of experience in purchasing products of
- 14 this type, correct?
- 15 A I would imagine so, yes.
- 16 Q Don't you talk to them occasionally?
- 17 A Yes, I do.
- 18 Q And they know you?
- 19 A Maybe not me specifically.
- 20 Q They know Pucel?
- 21 A Yes.
- 22 Q They know your father possibly?
- 23 A Yes.
- 24 Q So they know who they're dealing with when
- 25 they're talking to you?

1 A Some do.

2 Q Now, the Pucel 1967 catalog, which is our R-16
3 and R-4, which is the current catalog, for the most
4 part the product line hasn't changed; is that correct?

5 A It's been upgraded.

6 Q But basically what you were selling in 1967 is
7 what Pucel is selling today?

8 A Yeah. The elements in '67 are in the '99
9 catalog today, most of them.

10 Q Most of them. And when you say they have --
11 well, they're in the -- you're in the same categories
12 in terms of in '67 there were workbenches, cabinets,
13 desks, carts, drum equipment, racks, stands, tables,
14 trucks.

15 A That's correct.

16 Q And I would imagine that that fairly well
17 matches today's index of products.

18 A We just added certain areas, like updated like
19 computer cabinets that we didn't have back then.
20 We've updated into more work station applications that
21 weren't necessarily there. So we've brought it to a
22 different level from then.

23 Q But they're still workstations or workbenches
24 that you --

25 A That's correct.

1 Q - designed to fit modern technology?

2 A Yes.

3 Q There's no present plans to expand the product
4 line outside of your core line, is there?

5 A No, not at this point. We do have other items
6 we're preparing right now to add into the catalog.

7 Q You don't plan on selling drill presses next
8 year, do you?

9 A No.

10 Q Or power tools?

11 A No.

12 Q Now, has Pucel licensed anyone to use the
13 trademark Grizzly?

14 A No, we haven't.

15 Q Have you authorized anyone to use the trademark
16 Grizzly?

17 A People use it in their publications that you see
18 within the people sending out their catalogs.

19 Q Your distributors?

20 A That's correct.

21 Q You jointly prepare ads with them or authorize
22 them to prepare ads using your name?

23 A We authorize them and then we approve those, the
24 construction of them, make sure the wording is
25 correct.

1 Q But what they're selling are Pucel products with
2 the Grizzly name on it?

3 A That's correct.

4 Q They're not using the Grizzly name to sell
5 products other than those products manufactured by
6 Pucel, are they?

7 A That's correct.

8 Q Now, Pucel doesn't have any retail services.

9 A Only through the Internet.

10 Q If that's to be considered a retail store, then
11 it's your retail. You have no physical location?

12 A No, we don't.

13 Q Are you aware of any instance where Pucel ever
14 lost a sale to Grizzly Industrial?

15 A I'm not aware of it. The only thing would be
16 that one letter where that person faxed it over and
17 was asking for a quote.

18 Q That person was wanting to purchase from Pucel,
19 weren't they?

20 A Well, they called up wanting it and then found
21 out that it wasn't us after we faxed it and then they
22 said, "Well, why don't you quote it." So it was a
23 situation like that.

24 Q Where they could have been showing you
25 something, can you give me something like that?

- 1 A Could have been.
- 2 Q You're not exactly sure what their motive was?
- 3 A That's correct.
- 4 Q And you didn't handle that order, if there was
- 5 one, right?
- 6 A No.
- 7 Q There's been a number of instances, maybe five
- 8 to ten instances, over the past few years where
- 9 someone called Pucel or sent a fax to Pucel and
- 10 mentioned either the name Grizzly Industrial or
- 11 mentioned products that Pucel doesn't sell, correct?
- 12 A Could you repeat that?
- 13 Q There are approximately five to ten instances
- 14 that you're aware of where people have written to
- 15 Pucel or called Pucel mentioning Grizzly Industrial or
- 16 a product of Grizzly Industrial that you don't sell,
- 17 is that your understanding?
- 18 A There's a lot more than just a few over the past
- 19 few years.
- 20 Q I said five to ten.
- 21 A Yeah. There's a lot more than that.
- 22 Q How many?
- 23 A I'm not sure exactly.
- 24 Q Do you keep records of that?
- 25 A No, not specifically. Not every case.

1 Q Then you don't know how many?

2 A No, but I know that it's more than five to ten
3 for a fact.

4 Q What more can you tell me about that?

5 A Well, for example, just last Thursday or Friday
6 we had a call come in and it was just mentioned to me.
7 It wasn't documented or written down.

8 Q What was mentioned to you?

9 A Someone called, it was probably 7:30 a.m.,
10 called from Home Depot and wanted a Grizzly product so
11 they called us. He looked it up and called our number
12 and that's the extent that I know of it. But it would
13 be like that, instances like that that were occurring
14 all the time.

15 Q You sell Grizzly products.

16 A What's that?

17 Q You said someone called you referring to Grizzly
18 products and you sell Grizzly products.

19 A That's correct. They called. But it was some
20 item that was not ours. That's a confusion.

21 Q Do you know what the item was?

22 A No, I don't. Tony might know, but I'm just made
23 aware of it, just that it's happening and occurring.
24 That's the extent that I have of it.

25 Q Do you know if it was a Grizzly Industrial

1 product?

2 A Occasionally that's what it is they're looking
3 for. They say they want a Grizzly product, they start
4 giving a part number, we say we don't have that part
5 number and then it starts evolving because we go under
6 the assumption that we're Grizzly. It's Grizzly
7 products. So that's not unusual. So if someone says
8 I want a Grizzly product, that's not an unusual
9 request. And then they say I want model number
10 JN50212, and they're saying like, well, okay, then it
11 starts going deeper, what is it, and then we start
12 finding out that it's not our product directly.

13 Q Do you have firsthand knowledge of any of these
14 instances that you're talking about?

15 A Yes.

16 Q And what's the extent of your firsthand
17 knowledge?

18 A It would be some of the documented issues that
19 came up here.

20 Q Did you talk to any of the people that sent the
21 documents?

22 A No, I haven't.

23 Q So the only knowledge you have is secondhand
24 then?

25 A Directly I know that I've had at least one or

1 two of them myself. I don't have an opportunity to
2 the phone as I would like.

3 Q Do you remember the one or two that you may have
4 taken directly?

5 A Just the confusion. I can't specifically.

6 Q I don't know what you mean when you say "just
7 the confusion."

8 A Well, what I'm saying is they were asking for a
9 product and I'll say, yes, this is Grizzly, but it's
10 not the product that you're asking for. And they go,
11 "Well, can you direct me to the product the dust
12 collector?" And then I always left it at that and
13 said "No," but I never pursued it or went any further.

14 Q What are Sianor products?

15 A They're light switch plates.

16 Q Is Sianor a Pucel trademark?

17 A Yes.

18 Q Is that a separate business of Pucel from
19 material handling?

20 A No. It's all part of it, part of the company.

21 Q Are Sianor products in the Pucel catalog?

22 A No. We have a separate catalog that we send for
23 that.

24 Q And those are light switch plates?

25 A Um-hmm.

1 Q And you sell those under the Sianor trademark?

2 Am I saying it right, Sianor?

3 A Yeah. You're right. Sianor.

4 Q Now, prior to the Internet the past few years,
5 the focus of Pucel was on industrial users, correct?

6 A In years past.

7 Q In years - prior to the time that you went on
8 the Internet.

9 A That's hard to say because we didn't see all the
10 end users to that product.

11 Q Well, your target audience was certainly
12 industrial users, wasn't it, prior to the Internet?

13 A Industrial distributors we focused on, but like
14 I said, a distributor could sell to anybody they want
15 within their region or their district in which they're
16 selling.

17 Q Isn't it your understanding though that they
18 typically sell to industrial users?

19 A I don't have control over that. That's not a
20 concern of mine.

21 - - - - -

22 (Exhibit Mlakar R-17 was
23 marked for identification.)

24 - - - - -

25 Q 17 does not have a document number because Mr.

1 Mitchell produced that today. Mr. Mlakar, I have put
2 in front of you Exhibit R-17.

3 A Yes.

4 Q And that is the front cover of *Metal Working*
5 *Digest*.

6 A Um-hmm.

7 Q Pucel does not advertise in *Metal Working*
8 *Digest*, does it?

9 A At this point we do not have any ad in it.

10 Q Has Pucel ever run an ad in *Metal Working*
11 *Digest*?

12 A Tony would have a better idea of that.

13 Q Not to your knowledge?

14 A We have publications we've been in similar to
15 this and I'm not sure specifically it's *Metal Working*
16 *Digest*. I can't answer yes on that.

17 Q Looking at Exhibit R-1, remember that list of -

18 A Yes.

19 Q Looking at that list, can you think of any
20 printed publication that Pucel has advertised in other
21 than what's listed here?

22 A I don't specifically sign the contracts so I
23 don't know all of them. If they are not here, I would
24 not be aware of it.

25 Q Okay. I'm just asking you are you aware.

1 A No, I'm not.

2 Q You said you're not aware of any others that are
3 not listed here.

4 A That's correct.

5 Q Then I have at least one question for Tony.

6 - - - - -

7 (Exhibit Mlakar R-18 was
8 marked for identification.)

9 - - - - -

10 Q To save some time, I'm going to mark a lot of
11 these catalogs that you brought and I just want you to
12 say that you can identify them and that it contains or
13 doesn't contain an ad of yours.

14 A Okay.

15 Q Unless you want me to ask the questions, but I
16 would assume -

17 MR. MITCHELL: That's easier. You
18 can just give it to him, the same question.

19 Q There's a series here and I'm assuming some of
20 these are C&H, some are Global. I'd like to establish
21 that C&H is a distributor of yours -

22 A Yes.

23 Q - of Pucel. Global is a distributor?

24 A Yes.

25 Q And that these are pages from current or recent

1 catalogs that carry an ad or otherwise display Pucel's
2 products?

3 A That's correct.

4 MR. SCHMIDT: And I'm just going
5 to keep marking these and give you a
6 series, if that's okay with you, Ken.

7 MR. MITCHELL: That's fine.

8 MR. SCHMIDT: That's all I want to
9 establish is that these are your
10 distributors' catalogs and these are the
11 excerpts.

12 MR. MITCHELL: Sure.

13 MR. SCHMIDT: Some, not all
14 inclusive.

15 A Right. That's fair.

16 MR. SCHMIDT: Why don't we take a
17 break.

18 - - - - -
19 (Exhibit Mlakar R-19 through R-25
20 were marked for identification.)

21 - - - - -
22 (Recess had.)

23 Q We have a series of exhibits which I want you to
24 identify just in general terms as being Pucel
25 distributors and respective product placement of Pucel

1 products and their catalogs. So if you want to just
2 look at that - actually, let me identify the whole
3 series there, which would run from Exhibit R-18
4 through R-25, so if my general statements are then
5 applicable to all of them, we'll just move on once you
6 confirm that.

7 MR. MITCHELL: That's fine.

8 A You don't want me to comment on each one, just
9 look at them all and make one general statement?

10 Q If you have a comment on a particular one, feel
11 free, but don't feel compelled to. If it speaks for
12 itself, that's all that needs to be said.

13 A In response to R-18 to R-25, those are our
14 distributors in those catalogs and they do contain
15 Grizzly Equipment in them. It's not all-inclusive I
16 noticed on some of the pages, but it does represent
17 our product in there. I noticed some pages were
18 missing, but -

19 Q R-18 through R-25 would be representative of the
20 distributors of the type shown in those documents and
21 how your product is displayed in their catalogs; is
22 that right?

23 A Could you repeat that?

24 Q The Exhibits R-18 to R-25 would be
25 representative samples of distributors like C&H and

1 Global, that is Pucel's distributors, and how they
2 display your product in their catalogs?

3 A Yes. That is a sampling of our customers, yes.

4 Q And representative of how your product is sold
5 by customers like that?

6 A Yes.

7 Q Now, just to recap, the Global and C&H catalogs
8 are one way that Pucel's products are sold.

9 A Yes.

10 Q The other way is directly through Pucel
11 catalogs.

12 A Yes.

13 Q Another way is over the Pucel-Grizzly web site.

14 A Yes.

15 Q And are there any other ways that the product is
16 sold?

17 A Well, I did mention the fact that people do come
18 in the building, it's not a retail store, but they do
19 come in and we have outside people from the
20 neighborhood who just know we exist, like the product,
21 so -

22 Q Is that in addition to the annual auction sale
23 of -

24 A Yes, it is.

25 Q - second items?

1 A Yes, it is.

2 MR. MITCHELL: And just so the
3 recap also includes the retail stores he
4 had testified about, some retail store
5 activity in California and one or two -
6 five or six different places I think it was
7 total.

8 Q And is it accurate to say that you directly
9 place your product in some retail stores in
10 California, Cleveland and also New York?

11 A That's correct.

12 Q Any other cities?

13 A None that I'm aware of.

14 MR. MITCHELL: I thought the
15 testimony was Chicago and Atlanta, that
16 there were -

17 A Those were with the one company we were
18 referring to has six distribution centers and I
19 believe - I know that they stock our product and I'm
20 not quite sure how it's presented, but they're in each
21 area, California, New Jersey, Georgia, Ohio and
22 Chicago and then they just opened up one more.

23 Q These are distributors -

24 A Yes.

25 Q - that have showrooms?

1 A That stock our product.

2 Q But you don't know if the product is shown in
3 their showroom?

4 A I know that they have where our customers - they
5 say you can come in and do like a pick up or a will
6 call, and I'm not quite sure how, if that's a store
7 that they have. I just haven't visited them yet.

8 Q But what you're aware of in a traditional retail
9 environment is the one store in California, one in
10 Cleveland and one or more in New York?

11 A Yes. That's what I'm aware of.

12 Q That actually is a retail store that has your
13 products in the store, you can walk in off the street
14 and purchase it?

15 A And then we also have that one company who
16 actually -

17 Q Could you - before that, could you - I'm not
18 sure if you said yes to that. So in the traditional
19 retail environment it's those three places I mentioned
20 where people can actually walk in off the street and
21 buy your product?

22 A In a conventional way like that, yes.

23 Q And then you were saying?

24 A We also have another means that people are
25 selling to other people, in a sense, coming off the

1 street. The market is changing off the web site that
2 goes directly into the homes. So these people are
3 accessing - it becomes like a retail store and it's
4 shipped directly to their home.

5 Q So the web site you're considering -

6 A Absolutely.

7 Q - your electronic retail store?

8 A Absolutely, yes.

9 MR. SCHMIDT: So that we get
10 enough time with Tony, I think we ought to
11 switch over.

12 MR. MITCHELL: Are you finished
13 with Bob or Pucel or do you want to reserve
14 some time yet for that today? It's fine if
15 you do.

16 MR. SCHMIDT: Yeah. He couldn't
17 answer some questions and Tony could.

18 MR. MITCHELL: I just want to
19 reiterate he'll read the transcript.

20 (Recess had.)

21 - - - - -

22 (Exhibit Mlakar R-26 was
23 marked for identification.)

24 - - - - -

25

1 CONTINUED EXAMINATION OF ROBERT MLAKAR

2 BY MR. SCHMIDT:

3 Q R-26, is that the Pucel web site?

4 A Yes, it is.

5 Q There's a - I put a Post It on a page. Is that
6 the - if someone wants to order, if they go on your
7 web site and wants to order, is that the order page?

8 A No. This is just an e-mail page.

9 Q What is an e-mail page?

10 A An e-mail page, if they want any information on
11 a particular topic, the e-mail page would be - could
12 potentially be for RFQ, request for quote.

13 Q Is there an order page in there somewhere?

14 A Yes. When you click on the product and then put
15 it into the shopping cart, it will direct you to the
16 order form.

17 Q Would the order form show up on what I printed
18 out or it wouldn't? That's just what's available when
19 you print out the web site?

20 A This would be more of a correspondence sheet and
21 not necessarily an order form sheet.

22 Q If I click on order, is that something I could
23 print out?

24 A You should be able to.

25 Q Without ordering?

1 A Yes. I would imagine. Print the screen or -

2 Q Yeah.

3 A Yes.

4 Q You think you can?

5 A Um-hmm.

6 MR. SCHMIDT: If I can't, I'll
7 let you guys know and maybe you'll do that
8 for me.

9 MR. MITCHELL: Sure.

10 A Sure.

11 Q I just want to see what an order page looks
12 like.

13 A Sure.

14 Q Is it all the same?

15 A It looks basically all the same. It depends on
16 what the item is.

17 Q Is there anything there close to what the order
18 form looks like?

19 A I don't see it, no.

20 MR. MITCHELL: Do you have an
21 extra - do you have a copy of that?

22 MR. SCHMIDT: I have one, yeah.
23 They only made me two.

24 MR. MITCHELL: Okay. That's fine.
25 I think it's a matter of record. I don't

1 see it in there.

2 MR. SCHMIDT: You'll get that one
3 back.

4 MR. MITCHELL: We'll get a copy of
5 that from the court reporter.

6 MR. SCHMIDT: They had a lot of
7 trouble printing it out and as I was
8 leaving the office they had to make two and
9 I wanted three. Maybe you guys could just
10 do that for me then. I'll try and do it
11 too, but I'm just asking if you would give
12 me --

13 MR. MITCHELL: Sure.

14 MR. SCHMIDT: In fact, if you
15 could send it to the court reporter, I'd
16 like IT attached to the back page as a
17 sample, I would like it to be part of R-26
18 as a sample of the order form that way we
19 all are on the same page.

20 MR. MITCHELL: Is that a complete
21 printout of your web site there?

22 MR. SCHMIDT: I'm told it was, but
23 I can't -- if it's not, you can fix it up.
24 Be my guest.

25 MR. MITCHELL: Because it should

1 be content wise equivalent to the catalog.

2 THE WITNESS: Yes, it should be.

3 I'll go from memory, see if I can -

4 MR. MITCHELL: So we should send
5 that to Rebecca Brown?

6 MR. SCHMIDT: Yeah. And one copy
7 to me if you don't mind and that way it's
8 on the official exhibit and this way you've
9 approved to add it. Is that fair?

10 MR. MITCHELL: Yes.

11 MR. SCHMIDT: Both of you two then
12 have approved it rather than me trying to
13 tack it on some time.

14 MR. MITCHELL: Sure.

15 MR. SCHMIDT: Great. I appreciate
16 that.

17 MR. MITCHELL: Are you finished?

18 MR. SCHMIDT: No, but you got to
19 quit sometime.

20 - - - - -

21 (Deposition concluded at 4:25 p.m.)

22 - - - - -

23

24

25

Robert A. Mlakar

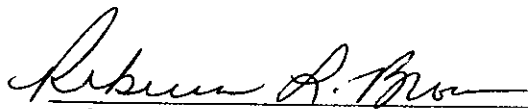
The State of Ohio,)
) SS: CERTIFICATE
County of Cuyahoga.)

I, Rebecca L. Brown, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named ROBERT A. MLAKAR was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, employee of, or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney for any of the parties in the above-captioned action; I am not financially interested in the action; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D); nor am I otherwise interested in the event of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 4th day of April, 2003.



Rebecca L. Brown, Notary
Public in and for the
State of Ohio.

My commission expires 6/5/05.

Mlakar Deposition
EXH. NO. 1

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

PUCEL ENTERPRISES, INC.
Petitioner,

v.

GRIZZLY INDUSTRIAL, INC.
Respondent.

CONSOLIDATED

Opposition No. 123,506	Mark: GRIZZLY.COM
Cancellation No. 31,984	Mark: GRIZZLY
Cancellation No. 32,024	Mark: GRIZZLY
Cancellation No. 32,025	Mark: GRIZZLY INDUSTRIAL


**GRIZZLY INDUSTRIAL, INC.'S NOTICE OF DEPOSITION
UNDER Fed. R. Civ. P. 30(b)(6)**

TO: Mr. Kenneth L. Mitchell
Woodling, Krost and Rust
9213 Chillicothe Road
Kirtland, OH 44094

PLEASE TAKE NOTICE, that commencing on Tuesday, March 18, 2003, at 9:30 a.m., at the offices of Baker & Hostetler LLP, 3200 National City Center, 1900 East 9th Street, Cleveland, Ohio, pursuant to Fed. R. Civ. P. 30(b)(6), 37 CFR 2.124(b)(2), and TBMP 404, before a duly authorized notary public or some other officer authorized to administer oaths, Grizzly Industrial, Inc. will take the deposition on oral examination of:

Pucel Enterprises, Inc., which, in accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, may designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf with respect to the matters set forth in the attached Exhibit A.

February 20, 2003



Joseph F. Schmidt
Lisa C. Childs
MICHAEL BEST & FRIEDRICH LLC
401 North Michigan Avenue, Suite 1900
Chicago, IL 60611
(312) 661-2100 (ph.) / (312) 222-0818 (fax)

Attorneys for Respondent
Grizzly Industrial, Inc.

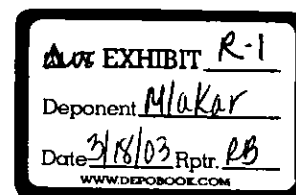


Exhibit A

1. The selection, adoption, and first use of Pucel's GRIZZLY and Bear logo ("the Marks"), and all trademark and service mark applications and registrations therefor.
2. Pucel's advertising, sale and marketing of products and services under the Marks.
3. All litigation, oppositions, and disputes, including, but not limited to, all instances when Pucel has objected to or received objections from third parties regarding the use or registration of the Marks, or any other mark or logo alleged to be likely to cause confusion with the Marks.
4. Third party uses of the mark GRIZZLY, of which opposer is aware, including the date and circumstances under which opposer first learned of each such use, and the nature and extent of opposer's knowledge of each such third party use.
5. Pucel's knowledge of Grizzly Industrial, Inc.
6. Pucel's knowledge of Grizzly Industrial, Inc.'s use of the marks GRIZZLY, GRIZZLY INDUSTRIAL, and GRIZZLY.COM for its goods and services.
7. All alleged instances of actual confusion or likelihood of confusion between the Marks and Grizzly Industrial, Inc.'s marks GRIZZLY, GRIZZLY INDUSTRIAL, and GRIZZLY.COM.
8. Market research and investigations which refer or relate to all alleged confusion or likelihood of confusion between the Marks and Grizzly Industrial, Inc.'s marks GRIZZLY, GRIZZLY INDUSTRIAL, and GRIZZLY.COM.
9. The purported fame of the Marks, including the identity of the market in which the Marks are famous, scope of advertising, sales made, and length of use.
10. The allegation that the Marks will be diluted.
11. All factual allegations in Pucel's notices of opposition and petitions for cancellation.
12. The channels of trade in which Pucel's products have been, currently are, or will be sold, distributed, advertised or otherwise marketed or promoted in connection with the Marks.

13. The nature of the business in which the primary purchasers and end users of Pucel's products are engaged.

14. The annual advertising and promotion costs of Pucel attributable to products sold or distributed under the Marks, for each year from the date of first use to the present.

15. The methods of advertising and all types of media used to advertise and promote the products in connection with which Pucel uses the Marks, including, but not limited to, the advertisements apparently placed in the following media:

- Ameritech Industrial Purchasing Guides (1991) (Z000356-58),
- New Equipment Digest (1983),
- Northern Ohio Regional Industrial Purchasing Guide (1984) (Z000267),
- Regional Industrial Buying Guide (Northern Ohio) (1995) (Z000271),
- Regional Industrial Buying Guide (Northern Ohio) (1996) (Z000275),
- Thomas Register (1998) (Z000279a),
- Industrial Equipment News (February 1984) (Z000294),
- Industrial Literature Review (Fall 1985) (Z000295),
- Midwest Purchasing Management (various in 1991 and October 1993) (Z000298-304),
- U.S. Industrial Directory (1988 and 1995, 1997) (Z000305-14),
- U.S. Export Directory (1991 and 1993) (Z000315-16),
- Printing Equipment Guide (1998) (Z000317),
- Greater Cleveland Growth Assoc. Membership Directory (1996) (Z000321),
- Laquiladora Supplier Handbook (undated) (Z000322),
- Chilton's Lit for Industry (1993) (Z000323-25),
- Literature Digest (1994, 1989, 1988, 1987, 1986, 1985, 1984, 1983) (Z000336-45),
- Ameritech proofs and yellow pages (2001 proof - Pucel, 2000 proof - Pucel, 1997 proof - Grizzly, 1992 yellow pages for Ohio - Grizzly and Pucel, 1991 yellow pages for Ohio - Grizzly, 1988 proof - Pucel) (Z000346-55);
- Ameritech Industrial Purchasing Section advertisements and/or proofs (Ohio 1993, 1994, 1996, 1997, 1998, 1999, 2000, 2001) (Z000359-67), and
- various undated, unidentified advertisements (e.g., Z000326-335)

16. The number of commercial impressions made each year since 1983, including, but not limited to, identification of all magazines or trade journals, number of catalogs printed, number of catalogs distributed, editions of catalogs prepared, and the method of distribution, number of hits Pucel's web site receives, direct sales force contacts, sales presentations whether by Pucel or a distributor, toll free number calls, the circulation of each publication in which Pucel advertises,

number of persons attending any trade shows in which Pucel participates, the number of visits any Pucel booth or the like receives at such trade shows.

17. Sales made each year since 1983, including, but not limited to, the number of sales, the average sale in dollars, the geographical location of Pucel's customers, the number of customers, number of active customer accounts, and the percentage of Pucel's sales since 1983 made to (a) persons in Ohio, (b) all sales to persons in Ohio, and the contiguous states of Michigan, Indiana, Kentucky, Pennsylvania, and West Virginia, (c) all sales to persons in states east of the Mississippi River, (d) all sales made in each state of the United States; and (e) all sales made outside the United States.

18. Pucel's competitors.

19. Pucel's top 50 selling products and Pucel's annual sales in round numbers of each of these products since 1983.

20. The percentage of sales in dollars made to (a) Pucel's five largest customers, (b) Pucel's ten largest customers, and (c) Pucel's hundred largest customers.

21. Pucel's knowledge of the web site www.grizzly.com.

22. The creation and maintenance of Pucel's internet web sites, including the domain www.pucel-grizzly.com and Pucel's link to the Thomas Register web site at www.pucel-grizzly.thomasregister.com/olc/pucel-grizzly, including the date when Pucel first used each such web site, any attempts to obtain any other web site names, such as www.grizzly.com or www.grizzly.net, and the annual sales resulting from using such web sites.

23. The financial books and records, including, but not limited to, the determination of advertising expenditures and gross sales since 1983.

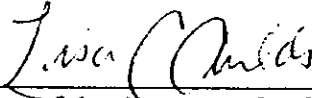
24. Pucel's distributors.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing GRIZZLY INDUSTRIAL, INC.'S NOTICE OF DEPOSITION UNDER Fed. R. Civ. P. 30(b)(6) was served on

Charles R. Rust
Kenneth L. Mitchell
Woodling, Krost and Rust
9213 Chillicothe Road
Kirtland, OH 44094

via first class mail, postage prepaid, this 20th day of February, 2003.

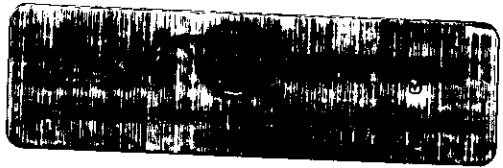


One of the Attorneys for Grizzly Industrial, Inc.

Mlakar Deposition
EXH. NO. 2



MFG. BY PUCEL ENTERPRISES INC., CLEVELAND, OH 44114
(216) 881-4604



~~EXHIBIT~~ EXHIBIT R-2
Deponent Mlakar
Date 3/18/03 Rptr. RB
WWW.DEPOBOOK.COM

Mlakar Deposition
EXH. NO. 3